

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

GREE, INC.,	) (	CIVIL ACTION NOS.
	) (	2:19-CV-70-JRG-RSP
PLAINTIFFS,	) (	2:19-CV-71-JRG-RSP
	) (	
VS.	) (	
	) (	MARSHALL, TEXAS
SUPERCELL OY,	) (	SEPTEMBER 10, 2020
	) (	12:55 P.M.
DEFENDANTS.	) (	

TRANSCRIPT OF JURY TRIAL

VOLUME 2 - AFTERNOON SESSION

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

MR STEVEN D. MOORE  
KILPATRICK TOWNSEND & STOCKTON LLP  
Two Embarcadero Center, Suite 1900  
San Francisco, CA 94111

MS. TAYLOR HIGGINS LUDLAM  
KILPATRICK TOWNSEND & STOCKTON LLP  
4208 Six Forks Road  
Raleigh, NC 27609

1 FOR THE PLAINTIFF:

2

3 MR. ALTON L. ABSHER III  
4 KILPATRICK TOWNSEND & STOCKTON LLP  
5 1001 West Fourth Street  
6 Winston-Salem, NC 27101

5

6 MR. MICHAEL T. MORLOCK  
7 KILPATRICK TOWNSEND & STOCKTON LLP  
8 1100 Peachtree Street, NE  
9 Suite 2800  
10 Atlanta, GA 30309

9

10 MS. TAYLOR J. PFINGST  
11 KILPATRICK TOWNSEND & STOCKTON LLP  
12 Two Embarcadero Center, Suite 1900  
13 San Francisco, CA 94111

12

13 MS. MELISSA R. SMITH  
14 GILLAM & SMITH, LLP  
15 303 South Washington Avenue  
16 Marshall, TX 75670

15

16 FOR THE DEFENDANT:

17

18 MR. MICHAEL J. SACKSTEDER  
19 MR. BRYAN A. KOHM  
20 MR. CHRISTOPHER L. LARSON  
21 MS. SHANNON E. TURNER  
22 FENWICK & WEST LLP  
23 555 California Street, 12th Floor  
24 San Francisco, CA 94104

22

23 MR. GEOFFREY R. MILLER  
24 FENWICK & WEST LLP  
25 902 Broadway, Suite 14  
New York, NY 10010

25

1 FOR THE DEFENDANT:

2  
3 MS. JESSICA M. KAEMPF  
4 MR. JONATHAN T. MCMICHAEL  
5 FENWICK & WEST LLP  
6 1191 Second Ave., 10th Floor  
7 Seattle, WA 98101

8  
9  
10  
11  
12 MR. DERON DACUS  
13 THE DACUS FIRM, P.C.  
14 821 ESE Loop 323, Suite 430  
15 Tyler, TX 75701  
16

17  
18 COURT REPORTER: Ms. Shelly Holmes, CSR, TCRR  
19 Official Court Reporter  
20 United States District Court  
21 Eastern District of Texas  
22 Marshall Division  
23 100 E. Houston  
24 Marshall, Texas 75670  
25 (903) 923-7464

(Proceedings recorded by mechanical stenography, transcript  
produced on a CAT system.)

P R O C E E D I N G S

(Venire panel in.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Ladies and gentlemen, if you will listen carefully, and as your name is called, if you'll come forward and take a seat in the jury box.

Before the names are called, let me mention to you that we're going to seat eight jurors. I'd like the first four on the front row of the jury box and the second four on the second row of the jury box.

And if the first person called will go to the front row and go all the way to the end, there -- there should be a plastic face shield in each chair where you're going to sit. If you'll sit in a chair with a plastic face shield, that will leave a vacant chair between you and the next person.

I can't see from where I'm sitting where they are, but I can now tell. So if the first person called will go to the last seat on the first row, second person will go to the third seat from the end, and leave a seat between you. The first four on the front row, the second four on the back row. And I believe on the back row, the last seat on that row has a face shield in it or -- or --

COURT SECURITY OFFICER: It does.

12:57:08 1 THE COURT: It does? So that's where you should  
12:57:11 2 sit on the back row.

12:57:12 3 All right. And if you will throughout the trial,  
12:57:14 4 maintain those same seats in the same order, that would be  
12:57:18 5 helpful.

12:57:19 6 All right. Ms. Lockhart, I'll ask you to announce  
12:57:23 7 the names of our eight jurors, please.

12:57:28 8 COURTROOM DEPUTY: Laura Smith, Stacy Adams, Maria  
12:57:42 9 Derrick, Patricia McCoy, Eleanor Brown, Terry Cato, Rachel  
12:58:07 10 Leathers, and Stephanie Ball.

12:58:22 11 THE COURT: All right. Those of you on the panel  
12:58:38 12 that were not selected, I'm about to excuse you at this  
12:58:43 13 time. But before I do, I want to take a minute and tell  
12:58:48 14 you how very much the Court, the court staff, the parties,  
12:58:54 15 the lawyers, everyone involved in this process appreciates  
12:58:58 16 you being here today and presenting yourself for jury  
12:59:02 17 service.

12:59:03 18 Even though you weren't selected, every one of you  
12:59:06 19 had places to be today and things to do that were important  
12:59:10 20 in your respective lives, and you set those other things  
12:59:14 21 aside and you sacrificed to come and be here and present  
12:59:18 22 yourselves as good citizens for jury duty.

12:59:21 23 And even though you weren't selected, I want you  
12:59:24 24 to understand that you made the process possible. If you  
12:59:27 25 had not been here, we would not have been able to seat this

12:59:31 1 jury from among you. And we would not be able to begin  
12:59:37 2 this trial. Every one of you have rendered very real and  
12:59:41 3 important public service about which you should each  
12:59:43 4 justifiably be -- be pleased.

12:59:47 5 Now, once I excuse you, you will be released from  
12:59:50 6 any instructions I have given you previously. I'm going to  
12:59:54 7 let you leave the courtroom. I'm going to ask our Court  
12:59:58 8 Security Officers to basically free you up one row at a  
01:00:00 9 time so that all of you don't get up at one big bunch and  
01:00:04 10 walk out of the courtroom.

01:00:06 11 Also, ladies and gentlemen, if you will see the  
01:00:09 12 clerk's office on the way out, they're going to want to  
01:00:11 13 recover these very expensive numbers that you have pinned  
01:00:14 14 to your chest. And they'll be available to answer any  
01:00:17 15 questions that you have about your service today.

01:00:21 16 If you need a written excuse for an employer,  
01:00:23 17 anything of that type that you need, please see  
01:00:26 18 Ms. Clendening and the staff in the clerk's office.  
01:00:29 19 They'll be more than happy to help you.

01:00:32 20 But, again, ladies and gentlemen, thank you so  
01:00:35 21 very much for being here. We rely on you as good citizens  
01:00:38 22 to do what you've done, and that's sacrifice and be present  
01:00:42 23 and present yourselves as you have.

01:00:43 24 With the thanks of the Court and everyone else  
01:00:46 25 here, you are now excused.

01:01:20 1 COURT SECURITY OFFICER: All rise.

01:01:21 2 (Venire Panel out.)

01:02:35 3 THE COURT: Please be seated.

01:03:12 4 All right. Members of the jury, at this time, I'm  
01:03:19 5 going to ask you to stand, and I'll ask our courtroom  
01:03:23 6 deputy, Ms. Lockhart, to administer the oath to you as  
01:03:26 7 members of this jury.

01:03:28 8 (Jurors sworn.)

01:03:40 9 THE COURT: Please be seated.

01:03:43 10 Ladies and gentlemen of the jury -- and, Mr. Cato,  
01:03:49 11 I understand you're the only man on this jury, but I'm not  
01:03:52 12 going to say ladies and gentleman. I'll say ladies and  
01:03:56 13 gentlemen, I'm sure, just out of habit. So please just  
01:04:00 14 accept it as that.

01:04:01 15 But, ladies and gentlemen, I'm about to excuse you  
01:04:04 16 for lunch. But before I do, I have a few short  
01:04:07 17 instructions I need to give you, but they're important, and  
01:04:10 18 I want to go over them with you now.

01:04:12 19 First of all, before you leave the courthouse  
01:04:14 20 today, I'm going to ask you to find a convenient time to  
01:04:21 21 let Ms. Clendening in the clerk's office have your personal  
01:04:25 22 cell phone number. There are possibilities out there that  
01:04:28 23 I have no idea whether they will or won't occur, but if we  
01:04:32 24 needed to reach you at any point before you drove to  
01:04:35 25 Marshall during the course of this trial, we need to have a

01:04:39 1 cell phone number where we could get ahold of you.

01:04:41 2 She won't keep them. They'll be destroyed once  
01:04:44 3 the trial is over, but please make sure you give  
01:04:47 4 Ms. Clendening a good working cell phone number for you  
01:04:50 5 where you can be reached if we needed you for any reason.

01:04:54 6 Also, ladies and gentlemen, let me give you -- all  
01:04:58 7 these instructions are important. This one is probably the  
01:05:00 8 most important -- or at least in my view it is. Do not  
01:05:01 9 discuss this case with anyone.

01:05:05 10 And let me explain that to you. At the end of  
01:05:08 11 this trial, you're going to be given a list of questions to  
01:05:12 12 answer. And the answers to those questions will constitute  
01:05:16 13 the jury's verdict in this case. And it is absolutely  
01:05:20 14 essential that when you come to that point of answering  
01:05:24 15 those questions, that the only information you have to draw  
01:05:30 16 upon is the evidence that's presented under oath and  
01:05:35 17 subject to cross-examination in this courtroom.

01:05:38 18 That means the sworn testimony of the witnesses  
01:05:40 19 and the exhibits and documents that the Court has admitted  
01:05:44 20 into evidence under the Rules of Evidence.

01:05:47 21 You must not have any other information before you  
01:05:52 22 or to be called upon by you as a part of answering those  
01:05:57 23 questions. If you do, it will call into jeopardy and risk  
01:06:01 24 the entirety of the proceeding and may raise the prospect  
01:06:06 25 of having to start over with a new jury and try the case



01:06:10 1 all over again from the beginning.

01:06:12 2           It is an absolutely fundament -- fundamental  
01:06:20 3 principle of this process that your answers to the  
01:06:22 4 questions in that verdict form, which by the way when it  
01:06:25 5 comes to that point, I will tell you, are going to have to  
01:06:28 6 be unanimous answers -- your unanimous, all eight members'  
01:06:32 7 answers to those questions must have as their source of  
01:06:35 8 information upon which to draw on only the sworn testimony  
01:06:38 9 given in open court, subject to cross-examination during  
01:06:43 10 this trial, and the exhibits which the Court admits into  
01:06:45 11 evidence. That is it.

01:06:47 12           And if there's anything else that comes into the  
01:06:51 13 process, it risks and jeopardizes the entirety of what  
01:06:56 14 we're doing. Therefore, you must not discuss this case  
01:06:59 15 with anyone.

01:07:00 16           And that means, ladies and gentlemen, until you've  
01:07:03 17 heard all the evidence and until I instruct you to retire  
01:07:06 18 to the jury room and deliberate on your verdict, you must  
01:07:11 19 not discuss anything about this case with each other.

01:07:15 20           Now, when you've heard all the evidence and when I  
01:07:18 21 instruct you to retire to the jury room and to deliberate  
01:07:22 22 on your verdict, at that point everything shifts. And at  
01:07:27 23 that point you must discuss the case with each other. But  
01:07:32 24 until that point, you may not under any circumstances  
01:07:36 25 discuss this case with yourselves or anyone else.

01:07:39 1 And when I say discuss the case, I mean  
01:07:43 2 communicate about it in the broadest sense of the term.

01:07:47 3 For example, unless you live alone, when you get  
01:07:50 4 home tonight, whoever is in that house, the first question  
01:07:55 5 out of their mouth is going to be, tell me what happened in  
01:07:58 6 federal court in Marshall today. You cannot even try to  
01:08:02 7 answer that question, because if you do, you will almost  
01:08:05 8 assuredly violate this instruction that I'm giving you.

01:08:09 9 So when that happens, just tell whoever it is that  
01:08:12 10 asks that question, I'm sorry, that very serious Judge in  
01:08:18 11 Marshall told me not to even try to answer that question,  
01:08:21 12 and he told me when the case was over and I had been  
01:08:24 13 released, I could talk about it with you if I wanted to,  
01:08:27 14 but not until then.

01:08:28 15 So, please, don't even try to answer that  
01:08:32 16 question, because it will be asked, I just guarantee you.  
01:08:35 17 Unless you live alone, whoever is there is going to ask  
01:08:38 18 that question when you get home tonight.

01:08:40 19 Also, when I say don't discuss the case, don't  
01:08:43 20 communicate about it in the broadest sense of the term.  
01:08:46 21 That means, not only verbally, that means don't email about  
01:08:49 22 it, don't text about it, don't tweet on Twitter, or post on  
01:08:54 23 Facebook or use Instagram or any other electronic means,  
01:08:59 24 any social media whatsoever. That is communicating in the  
01:09:03 25 same sense as talking to your spouse or to a neighbor about

01:09:07 1 this case. Don't communicate in any way about anything  
01:09:10 2 regarding this case.

01:09:13 3 Also, when I say don't communicate about the case,  
01:09:16 4 that means don't try to find out anything about anything  
01:09:24 5 related to the case except that information that you  
01:09:26 6 receive in those chairs in this jury box in this courtroom  
01:09:29 7 during this trial.

01:09:31 8 That means, ladies and gentlemen, don't go home  
01:09:33 9 and get on the Internet and Google Supercell or GREE or any  
01:09:38 10 of these games or any of these lawyers or me or anything  
01:09:43 11 else about this case.

01:09:45 12 Don't communicate. Don't do any research. Don't  
01:09:48 13 talk about, don't use any social media, don't in the  
01:09:53 14 broadest sense of the term, communicate about this case in  
01:09:56 15 any way. Because if any of you do, it will jeopardize the  
01:10:01 16 entirety of the process.

01:10:02 17 As a matter of fact, ladies and gentlemen, I'm  
01:10:04 18 going to ask you when you come to the courthouse tomorrow  
01:10:08 19 not to bring your cell phones with you. You can leave them  
01:10:12 20 in your car if you need them. If you're expecting an  
01:10:15 21 important message for something that you do in your  
01:10:18 22 business and you need to have a chance to check your email  
01:10:21 23 on your phone in your car, we'll allow you to do that.

01:10:24 24 But if you have those miniature computers that you  
01:10:27 25 hold in your hand with you in the jury room, you're going

01:10:29 1 to be tempted -- or some people will be tempted -- to do a  
01:10:32 2 search about something that they've never heard of before  
01:10:35 3 that they just heard about in the courtroom during the  
01:10:37 4 trial. That's improper.

01:10:38 5 So don't bring your cell phones or any tablets or  
01:10:42 6 any electronic devices with you when you come to court  
01:10:47 7 tomorrow. Either leave them at home, or leave them in your  
01:10:51 8 vehicles.

01:10:51 9 Now, you need to understand the lawyers will have  
01:10:53 10 iPads and laptops and cell phones with them. In today's  
01:10:58 11 world, those are tools of the trade, and they're entitled  
01:11:00 12 to use them as a part of presenting their case during this  
01:11:04 13 trial.

01:11:05 14 They're also under very strict instructions from  
01:11:07 15 me to keep them on silent at all times. And if any of them  
01:11:11 16 or anybody in the gallery's devices interrupt or disrupt  
01:11:15 17 this proceeding, I'll take very direct action.

01:11:18 18 But let me return to my primary instruction. Do  
01:11:23 19 not discuss or communicate with anyone in any way about  
01:11:26 20 anything related to this case.

01:11:28 21 And I'll -- I'll tell you this, ladies and  
01:11:30 22 gentlemen. This is so important. You're going to hear it  
01:11:34 23 from me time after time. Just about every time you get up  
01:11:39 24 out of those chairs and walk out of that jury box, you're  
01:11:42 25 going to hear me say, don't communicate with anyone in any

01:11:45 1 way about this case. I promise you, you're going to be  
01:11:47 2 tired of hearing this from me by the time this trial is  
01:11:50 3 over. But I'm going to repeat it as many times as I can  
01:11:53 4 because it is so absolutely foundational to the jury trial  
01:11:58 5 process and fundamental to this being a fair and impartial  
01:12:02 6 trial. So just be warned, you're going to hear this from  
01:12:06 7 me over and over again.

01:12:07 8 Also, ladies and gentlemen, I don't know if it  
01:12:13 9 will happen as a part of this trial, it rarely does, but  
01:12:16 10 this is an important case, and these are significant  
01:12:19 11 parties. And let me just say there are no insignificant  
01:12:23 12 cases that make it to trial in a United States District  
01:12:25 13 Court.

01:12:27 14 Therefore, it is possible, not likely, but it is  
01:12:32 15 possible that some outside third party might approach you  
01:12:36 16 or approach someone close to you and try to influence how  
01:12:40 17 you might decide this case.

01:12:42 18 If there's anything that happens before I've  
01:12:46 19 accepted your verdict and discharged you as jurors, if  
01:12:49 20 there's anything before then that happens that you in any  
01:12:54 21 way feel is improper or something that it shouldn't be or  
01:12:58 22 untoward in any way, then you should let Ms. Clendening  
01:13:01 23 know immediately, she'll advise me, and the Court will deal  
01:13:06 24 with it. I don't think it's likely, but this is not an  
01:13:09 25 insignificant case. And you should be aware of that.

01:13:11 1 Lastly, ladies and gentlemen, before I let you go  
01:13:14 2 to lunch, over the course of this trial, because of where  
01:13:18 3 we are, because this is a relatively small United States  
01:13:23 4 District Courthouse, because it opens directly on to the  
01:13:27 5 town square here in Marshall, there are going to be times  
01:13:30 6 over the course of this trial where as you come in the  
01:13:33 7 mornings, as you leave in the evenings, as we have a break  
01:13:36 8 for lunch or recess, you may come close by one or more of  
01:13:40 9 these lawyers, one or more of the witnesses, or one or more  
01:13:43 10 of the corporate representatives, or somebody affiliated  
01:13:47 11 with one or the other side of the case.

01:13:53 12 When that happens, you will have your little badge  
01:13:56 13 on that says juror, and they're not going to talk to you if  
01:13:59 14 you have a badge on that says juror. And if you walk right  
01:14:02 15 by them first thing in the morning, they're not going to  
01:14:05 16 smile and say, good morning, how are you today? They're  
01:14:07 17 not going to be friendly and gregarious like we always are  
01:14:12 18 in East Texas, but that's because I've instructed them not  
01:14:16 19 to.

01:14:16 20 And that's because the only communications that  
01:14:19 21 you should have and have before you as a part of your job  
01:14:21 22 as jurors in answering the questions in the verdict form  
01:14:25 23 unanimously must come from the sworn testimony in this  
01:14:28 24 trial and the exhibits which I admit into evidence and  
01:14:32 25 nothing else.

01:14:33 1           So don't think when that happens, if Ms. Smith or  
01:14:37 2 Mr. Dacus or any of these other people would otherwise act  
01:14:41 3 in a way that you might think is rude or unfriendly, don't  
01:14:45 4 think they're being rude or unfriendly. They're not.  
01:14:48 5 They're simply following the Court's instructions. And so  
01:14:50 6 you need to be aware of that.

01:14:52 7           Now, I have 15 minutes after 1:00 o'clock. Your  
01:14:56 8 lunch should be waiting for you in the jury room. I'm  
01:14:59 9 going to recess until 2:00 p.m., and if you'll have lunch  
01:15:04 10 over the next 45 minutes, we'll reconvene as close to 2:00  
01:15:08 11 p.m. as possible. And at that time, I'll have additional  
01:15:11 12 preliminary jury instructions to give you.

01:15:14 13           Following that, counsel for the Plaintiff will  
01:15:17 14 present their opening statement, and then Defendant will  
01:15:21 15 present their opening statement. And then after that, the  
01:15:24 16 Plaintiff will call its first witness, and we'll begin the  
01:15:27 17 evidence in the trial.

01:15:27 18           Over this lunch break, please take those plastic  
01:15:31 19 face shields with you and take a moment to remove the film  
01:15:34 20 on each side and have them available so that when you come  
01:15:38 21 back at 2:00 o'clock, we can replace the masks with the  
01:15:42 22 face shields, as I talked about with you earlier.

01:15:44 23           If you personally feel very strongly that you  
01:15:46 24 should keep the mask on, then please put the face shield  
01:15:50 25 on, as well, and leave the mask. But unless you feel very

01:15:53 1 strongly about it, it's important for these lawyers, and  
01:15:56 2 for the Court for that matter, to be able to see your face  
01:15:58 3 and your expression as this evidence is presented, just  
01:16:02 4 like it's important for you to see the lawyers' faces as  
01:16:04 5 they present the evidence, and that's why when they address  
01:16:07 6 you, they won't be masked either.

01:16:09 7 All right. With those instructions, ladies and  
01:16:14 8 gentlemen, you are excused to the jury room for lunch.

01:16:18 9 COURT SECURITY OFFICER: All rise.

01:16:19 10 (Jury out.)

01:16:20 11 THE COURT: All right. Counsel, the Court stands  
01:16:51 12 in recess until 2:00 p.m.

01:16:55 13 (Recess.)

02:28:17 14 (Jury out.)

02:28:17 15 COURT SECURITY OFFICER: All rise.

02:28:51 16 THE COURT: Be seated, please.

02:28:52 17 Counsel, before I bring in the jury and begin with  
02:29:20 18 my preliminary instructions, followed by your opening  
02:29:23 19 statements, and because Judge Payne handled the pre-trial  
02:29:28 20 on this, I want to make sure that we're on the same page  
02:29:33 21 with at least regard to one logistical matter.

02:29:38 22 I'm not going to have bench conferences at the  
02:29:42 23 bench during this trial. As much as I like your smiling  
02:29:47 24 faces, I don't want six lawyers six inches from my face  
02:29:50 25 here at the side of the bench whispering.



02:29:52 1 If you feel compelled to raise an issue with the  
02:29:55 2 Court outside the presence of the jury, then I will send  
02:29:58 3 the jury out, and we'll have whatever would have been an  
02:30:01 4 at-the-bench conference in open court.

02:30:03 5 That's problematic for a couple reasons, not at  
02:30:10 6 least of which is the delay in time and disruption that it  
02:30:15 7 causes. So I'm going to ask you to use your very best  
02:30:17 8 efforts to minimize the need to come to the bench during  
02:30:19 9 the course of the trial.

02:30:21 10 I have tried some cases where I thought the  
02:30:23 11 lawyers were going to wear a hole in the carpet coming back  
02:30:27 12 and forth to the bench so many times. That does not need  
02:30:30 13 to happen here.

02:30:31 14 And if we have bench conferences where to  
02:30:34 15 effectuate that I have to send the jury out, have -- take  
02:30:37 16 up the matter with you here in the courtroom on the record,  
02:30:39 17 and then bring the jury back, the loser, in my view, of  
02:30:44 18 that exchange will have the time it took to do all that  
02:30:47 19 charged against their trial time.

02:30:48 20 So just know those are going to be the rules going  
02:30:51 21 forward with regard to approaching the bench.

02:30:54 22 Are there any questions from counsel before I  
02:30:58 23 bring in the jury and begin with the Court's preliminary  
02:31:01 24 jury instructions?

02:31:03 25 MR. MOORE: No, Your Honor.

02:31:04 1 MR. DACUS: No, Your Honor.

02:31:05 2 THE COURT: All right. Let's bring in the jury,  
02:31:08 3 please.

02:31:08 4 COURT SECURITY OFFICER: Yes, sir.

02:31:09 5 All rise.

02:31:10 6 (Jury in.)

02:31:47 7 THE COURT: Welcome back, ladies and gentlemen of  
02:31:52 8 the jury. Please have a seat.

02:31:54 9 Ladies and gentlemen, I now have some preliminary  
02:32:03 10 instructions that I need to give you on the record before  
02:32:06 11 we start with the opening statements from the lawyers and  
02:32:10 12 then after their opening statements, get on to the evidence  
02:32:12 13 in the case.

02:32:13 14 You have now been sworn as the jurors in this  
02:32:18 15 case, and as the jury, you are the sole judges of the  
02:32:21 16 facts. And as such, you will decide and determine all the  
02:32:25 17 facts in this case.

02:32:27 18 As the Judge, I will give you instructions on the  
02:32:29 19 law. I will decide any questions of law that arise during  
02:32:33 20 the course of the trial. I'll handle all matters related  
02:32:36 21 to evidence and procedure. And I'm also responsible for  
02:32:40 22 maintaining an efficient flow of the evidence over the  
02:32:43 23 course of the trial and maintaining the decorum of the  
02:32:47 24 courtroom.

02:32:47 25 At the end of the evidence, I'll give you detailed

02:32:50 1 instructions about the law to apply in deciding this case,  
02:32:56 2 and I'll give you a list of questions that you are then to  
02:32:58 3 answer.

02:32:59 4 And as I mentioned, this list of questions is  
02:33:02 5 called the verdict form, and your answers to those  
02:33:05 6 questions will need to be unanimous, and those unanimous  
02:33:09 7 answers will constitute the jury's verdict in this case.

02:33:15 8 Now, let me briefly tell you what this case is  
02:33:17 9 about.

02:33:18 10 As you know, this case involves a dispute  
02:33:20 11 regarding certain United States patents. I know that  
02:33:25 12 you've all seen the patent video produced by the Federal  
02:33:31 13 Judicial Center, but I need to give you some additional  
02:33:33 14 instructions now and on the record about a patent and how  
02:33:36 15 one is obtained.

02:33:37 16 Patents are either granted or denied by the United  
02:33:42 17 States Patent and Trademark Office. That's sometimes  
02:33:46 18 referred to simply as the PTO for short.

02:33:49 19 A valid United States patent gives the holder the  
02:33:52 20 right for up to 20 years from the date the patent  
02:33:55 21 application is filed to prevent others from making, using,  
02:34:00 22 offering to sell, or selling the patented invention within  
02:34:05 23 the United States or from -- or from importing it into the  
02:34:08 24 United States without the patentholder's permission.

02:34:12 25 A patent is a form of property called intellectual

02:34:16 1 property. And like other forms of property, a patent can  
02:34:21 2 be bought and can be sold.

02:34:23 3 A violation of the patentholder's rights is called  
02:34:25 4 infringement. A patentholder may try to enforce a patent  
02:34:29 5 against persons it believes to be infringers by filing a  
02:34:33 6 lawsuit in federal court, and that's what we have in this  
02:34:37 7 case.

02:34:37 8 The process of obtaining a patent is called patent  
02:34:41 9 prosecution. To obtain a patent, one must first file an  
02:34:46 10 application with the PTO. The PTO is an agency of the  
02:34:51 11 United States Government.

02:34:53 12 Technically, ladies and gentlemen, it's a branch  
02:34:54 13 of the United States Department of Commerce. The PTO  
02:34:59 14 employs trained examiners who review the applications for  
02:35:04 15 patents.

02:35:04 16 The patent application, as submitted to the PTO,  
02:35:10 17 includes within it what's called a specification. The  
02:35:14 18 specification contains a written description of the claimed  
02:35:18 19 invention telling what it is, how it works, how to make it,  
02:35:22 20 and how to use it.

02:35:24 21 The specification concludes or ends with one or  
02:35:28 22 more numbered sentences. These numbered sentences that  
02:35:32 23 follow the specification are called the patent claims. And  
02:35:35 24 when a patent is granted by the Patent and Trademark  
02:35:38 25 Office, it's the claims, ladies and gentlemen, that define

02:35:42 1 the boundaries of the patent's protection and give notice  
02:35:45 2 to the public of those boundaries.

02:35:48 3 Patent claims may exist in two forms referred to  
02:35:53 4 as independent claims and dependent claims.

02:35:57 5 An independent patent claim does not refer to any  
02:36:00 6 other claim in the patent. It's independent. It stands  
02:36:04 7 alone. It's not necessary to look at any other claim in  
02:36:08 8 the patent to determine what an independent claim covers.

02:36:10 9 However, a dependent claim refers to at least one  
02:36:16 10 other claim in the patent. A dependent claim includes each  
02:36:21 11 of the limitations or elements of that other claim or  
02:36:24 12 claims from which it refers, or as we sometimes say from  
02:36:29 13 which it depends, as well as the additional limitations or  
02:36:33 14 elements recited within the dependent claim itself.

02:36:36 15 Therefore, to determine what a dependent patent  
02:36:41 16 claim covers, it's necessary to look at both the dependent  
02:36:45 17 claim itself and the independent claim or claims from which  
02:36:48 18 it depends.

02:36:50 19 The claims of the patents in this suit use the  
02:36:54 20 word comprising. Comprising means including or containing.  
02:36:59 21 A claim that includes the word comprising is not limited to  
02:37:04 22 the methods or devices having only the elements recited in  
02:37:09 23 the claim but covers other methods or devices that add  
02:37:12 24 additional elements.

02:37:15 25 Let me give you an example. If you will, consider

02:37:18 1 a table, and if there is a claim to that table and that  
02:37:22 2 claim recites a table comprising a tabletop, legs, and  
02:37:28 3 glue, then the claim will cover any table that contains  
02:37:32 4 these structures, even if the table contains other  
02:37:36 5 structures, such as a leaf to go in the tabletop or wheels  
02:37:39 6 to go on the ends of the legs.

02:37:41 7 Now, that's a simple example using the word  
02:37:44 8 comprising and what it means. In other words, it can have  
02:37:47 9 other features in addition to those that are actually  
02:37:51 10 covered by the patent.

02:37:52 11 Now, after the applicant files their application  
02:37:56 12 with the PTO, an examiner is assigned, and that examiner  
02:38:00 13 reviews the application to determine whether or not the  
02:38:05 14 claims are patentable, that is, appropriate for patent  
02:38:09 15 protection, and the examiner determines whether or not the  
02:38:12 16 specification adequately describes the claimed invention.

02:38:16 17 In examining a patent application, the examiner  
02:38:20 18 reviews certain information about the state of the  
02:38:25 19 technology at the time the application was filed.

02:38:28 20 The PTO, through its examiner, searches for and  
02:38:32 21 reviews this type of information that is publicly available  
02:38:36 22 or that may have been submitted to the PTO by the  
02:38:39 23 applicant. This type of information is called prior art.

02:38:45 24 The examination -- examiner re -- reviews this  
02:38:48 25 prior art to determine whether or not the invention is

02:38:51 1 truly an advance over the state of the art at the time.

02:38:58 2 Now, prior art is defined by law, and at a later  
02:39:01 3 time, I'll give you specific instructions as to what  
02:39:05 4 constitutes prior art.

02:39:07 5 However, in general, ladies and gentlemen, prior  
02:39:10 6 art includes information that demonstrates the state of the  
02:39:14 7 technology that existed before the claimed invention was  
02:39:17 8 made or before the application for a patent was filed.

02:39:22 9 A patent contains a list of certain prior art that  
02:39:27 10 has been -- has been considered by the examiner, and these  
02:39:31 11 items of prior art on the list are called the cited  
02:39:35 12 references.

02:39:37 13 Now, after the examiner undertakes the prior art  
02:39:41 14 search and examines the application, the examiner then  
02:39:45 15 informs the applicant in writing of what the examiner has  
02:39:49 16 found and whether the examiner considers any claim in the  
02:39:52 17 application to be patentable, or -- and if they do, that --  
02:39:57 18 that patent claim would be allowed.

02:39:59 19 Now, the writing from the examiner to the  
02:40:03 20 applicant is called an Office Action. And if the examiner  
02:40:08 21 rejects the claims, the applicant has an opportunity to  
02:40:12 22 respond to the examiner to try and persuade the examiner to  
02:40:15 23 allow the claims.

02:40:17 24 The applicant also has an opportunity to change or  
02:40:20 25 amend the claims or to submit new claims. And the papers

02:40:25 1 generated in this process of communicating back and forth  
02:40:28 2 between the examiner and the applicant are called the  
02:40:31 3 prosecution history.

02:40:34 4 And this process may go on for some time back and  
02:40:37 5 forth between the applicant and the examiner until the  
02:40:40 6 examiner is satisfied that the application meets the  
02:40:44 7 requirements for a patent.

02:40:45 8 And, in that case, the application issues as a  
02:40:49 9 United States patent, or in the alternative, if the  
02:40:56 10 examiner ultimately concludes that the application should  
02:40:58 11 be rejected, then no patent is issued.

02:41:02 12 Sometimes -- sometimes patents are issued after  
02:41:05 13 appeals within the PTO or to a court.

02:41:08 14 Now, the fact that the Patent and Trademark Office  
02:41:14 15 grants a patent does not necessarily mean that any  
02:41:16 16 invention claimed in the patent, in fact, deserves the  
02:41:19 17 protection of a patent.

02:41:20 18 You should understand that all issued United  
02:41:26 19 States patents are presumed under the law to be valid, and  
02:41:28 20 a person accused of infringement has the right to argue  
02:41:32 21 here in federal court that a claimed invention in a patent  
02:41:35 22 is not valid, or as we say, is invalid.

02:41:38 23 And it's your job, ladies and gentlemen, as the  
02:41:43 24 jury, to consider the evidence presented by the parties in  
02:41:45 25 this case and determine independently and for yourselves



02:41:50 1 whether or not the Defendant has proven that any of the  
02:41:53 2 five asserted patents in this case are invalid. And that  
02:41:58 3 proof, as I will tell you, must be by clear and convincing  
02:42:00 4 evidence.

02:42:01 5 Now, to help you follow the evidence in this case,  
02:42:06 6 I'm going to give you a brief summary of the positions of  
02:42:09 7 the two competing parties.

02:42:12 8 As you know, the party that brings a lawsuit is  
02:42:14 9 called the Plaintiff. The Plaintiff in this case is GREE,  
02:42:17 10 Inc., which is -- which will be referred to throughout the  
02:42:20 11 trial simply as Plaintiff or as GREE.

02:42:22 12 And as you know, the party against whom a lawsuit  
02:42:25 13 is brought is called the Defendant. And the Defendant in  
02:42:28 14 this case is Supercell Oy, which will be referred to  
02:42:32 15 throughout the trial either as the Defendant or as  
02:42:35 16 Supercell.

02:42:36 17 And as I told you during jury selection, this is a  
02:42:41 18 case of alleged patent infringement. And as you are aware,  
02:42:47 19 this case involves five separate United States patents that  
02:42:50 20 have been issued by the PTO and are asserted by the  
02:42:54 21 Plaintiff in this case.

02:42:55 22 The first of these asserted patents is U.S. Patent  
02:43:01 23 No. 9,604,137.

02:43:03 24 And, ladies and gentlemen, patents are generally  
02:43:06 25 referred to by their last three digits. So in this case,

02:43:13 1 Patent No. 9,604,137 will be referred to throughout the  
02:43:17 2 trial as the '137 or the '137 patent.

02:43:19 3 The second U.S. patent at issue in this case is  
02:43:22 4 United States Patent No. 9,956,481, which you will hear  
02:43:28 5 referred to throughout the case as the '481 patent.

02:43:32 6 The third United States patent at issue is United  
02:43:36 7 States Patent No. 9,774,655, which you can expect to be  
02:43:41 8 referred to throughout the case as the '655 patent.

02:43:44 9 And the fourth United States patent at issue in  
02:43:47 10 this case is United States Patent No. 9,795,873, which you  
02:43:54 11 can expect to be referred to throughout this trial as the  
02:43:59 12 '873 patent.

02:43:59 13 And the fifth and final United States patent at  
02:44:03 14 issue in this case is United States Patent No. 9,597,594,  
02:44:11 15 which you will hear referred to as the '594 patent.

02:44:14 16 And you'll also hear, ladies and gentlemen, all  
02:44:19 17 five of these asserted patents referred to in this case as  
02:44:23 18 the patents-in-suit. You may also hear them collectively  
02:44:27 19 referred to as the asserted patents. And these patents  
02:44:32 20 generally relate to video game technology.

02:44:35 21 Now, the Plaintiff in this case, GREE, contends  
02:44:38 22 that the Defendant, Supercell, is willfully infringing  
02:44:43 23 certain claims of the asserted patents by importing,  
02:44:47 24 making, or selling products that include their patented  
02:44:51 25 technology.

02:44:51 1 GREE also contends that Supercell has induced or  
02:44:57 2 contributed to and continues to induce or contribute to  
02:45:03 3 infringement by others.

02:45:04 4 GREE also contends that it is entitled to money  
02:45:08 5 damages as a result of this infringement.

02:45:10 6 The Defendant, Supercell, denies that it is  
02:45:14 7 infringing any of the claims of the asserted patents  
02:45:19 8 brought in this suit by the Plaintiff, and it contends that  
02:45:22 9 the claims of the patents-in-suit for the five  
02:45:27 10 patents-in-suit are invalid as being either anticipated or  
02:45:30 11 obvious in light of prior art.

02:45:32 12 Supercell also contends that the asserted claims  
02:45:36 13 of the patents-in-suit are invalid because their  
02:45:40 14 specifications do not contain a sufficient -- a sufficient  
02:45:44 15 written description of the invention and do not enable a  
02:45:48 16 person of skill in the art to make and use the invention.

02:45:52 17 Finally, the Defendant contends that even if it  
02:45:56 18 does infringe the asserted claims, any damages awarded to  
02:46:01 19 the Plaintiff should be limited because the Defendant  
02:46:05 20 asserts that the Plaintiff, GREE, failed to provide  
02:46:08 21 Supercell with notice of the patents-in-suit required by  
02:46:11 22 the patent laws.

02:46:13 23 Now, ladies and gentlemen, I know that there are  
02:46:16 24 many new words and concepts that have been -- that have  
02:46:19 25 been thrown at you since you appeared in federal court this

02:46:22 1 morning.

02:46:22 2 I'm going to define a lot of these words and  
02:46:25 3 concepts for you as we go through my instructions. The  
02:46:29 4 attorneys are going to discuss them in their opening  
02:46:33 5 statements. And the witnesses are going to help you  
02:46:35 6 through their testimony to understand these words and  
02:46:38 7 concepts.

02:46:39 8 So, please, do not feel overwhelmed at this point.  
02:46:43 9 I promise you, it will all come together as we go through  
02:46:47 10 the trial.

02:46:47 11 Now, one of your jobs is to decide whether or not  
02:46:50 12 the asserted claims of the five patents-in-suit have been  
02:46:54 13 infringed and whether they are invalid.

02:46:57 14 If you decide that any claim of the five  
02:47:01 15 patents-in-suit has been infringed by the Defendant and is  
02:47:05 16 not invalid, then you'll need to decide whether or not the  
02:47:11 17 infringement by the Defendant was willful. You will also  
02:47:14 18 then need to decide what amount of money damages should be  
02:47:20 19 awarded to the Plaintiff as compensation for that  
02:47:22 20 infringement.

02:47:22 21 Now, my job in this case is to tell you what the  
02:47:26 22 law is, to handle rulings on evidence and procedure, and to  
02:47:30 23 oversee the conduct of the trial as efficiently and  
02:47:33 24 effectively as -- as possible.

02:47:35 25 In determining the law, it is specifically my job

02:47:39 1 to determine the meaning of any of the claim language  
02:47:43 2 within the asserted claims within the patents-in-suit that  
02:47:47 3 needs interpretation.

02:47:48 4 I have already determined the meanings of the  
02:47:52 5 claims of the patents-in-suit, and you must accept the  
02:47:56 6 meanings of that language that I give you and use those  
02:47:59 7 constructions or definitions when you decide whether or not  
02:48:03 8 any particular claim has or has not been infringed and  
02:48:08 9 whether or not any claim is invalid.

02:48:11 10 Now, you're going to be given a document in a few  
02:48:15 11 moments that reflects those meanings or constructions that  
02:48:18 12 the Court has already reached.

02:48:21 13 For any claim term or language that has -- that I  
02:48:25 14 am not providing you with a specific construction for, a  
02:48:30 15 specific definition, then in that case, you should apply  
02:48:33 16 the plain and ordinary meaning of those terms.

02:48:36 17 If, however, I've provided you with a specific  
02:48:39 18 definition, then you are to apply my definition to those  
02:48:44 19 terms throughout the case.

02:48:46 20 However, my interpretation of the language of the  
02:48:49 21 claims should not be taken by you to indicate that I have  
02:48:54 22 any personal opinion regarding the issues of infringement  
02:48:58 23 and validity, because, ladies and gentlemen, those issues  
02:49:01 24 are your issues to decide in this case, and you must decide  
02:49:04 25 them alone.

02:49:05 1 I'll provide you with more detailed instructions  
02:49:08 2 on the meaning of the claims before you retire to  
02:49:11 3 deliberate and reach your verdict.

02:49:13 4 In deciding the issues that are before you, you'll  
02:49:16 5 be asked to consider specific legal rules, and I'll give  
02:49:20 6 you an overview of those rules now. And then at the  
02:49:23 7 conclusion of the case, I'll give you much more detailed  
02:49:26 8 instructions.

02:49:27 9 The first issue that you're asked to decide is  
02:49:30 10 whether the Defendant, Supercell, has infringed any of  
02:49:35 11 the -- the asserted claims of the patents.

02:49:37 12 Infringement, ladies and gentlemen, is assessed on  
02:49:40 13 a claim-by-claim basis. And GREE, the Plaintiff, must show  
02:49:45 14 by a preponderance of the evidence that a claim has been  
02:49:48 15 infringed. Therefore, there may be infringement as to one  
02:49:53 16 claim but no infringement as to another claim.

02:49:56 17 There are also a few different ways that a patent  
02:50:00 18 can be infringed. I'll explain the requirements for each  
02:50:03 19 of these types of infringement in detail at the conclusion  
02:50:07 20 of the case.

02:50:08 21 But, in general, a Defendant may infringe the  
02:50:13 22 asserted patent by making, using, selling, or offering for  
02:50:18 23 sale in the United States or importing into the United  
02:50:21 24 States a product meeting all the requirements of a claim  
02:50:24 25 within the asserted patent.

02:50:26 1 And I'll provide you with more detailed  
02:50:28 2 instructions on these requirements regarding infringement  
02:50:30 3 at the conclusion of the case.

02:50:32 4 Now, the second issue that you're going to be  
02:50:36 5 asked to decide is whether the asserted patents -- any of  
02:50:41 6 the asserted patents are invalid.

02:50:42 7 Invalidity, ladies and gentlemen, is a defense to  
02:50:45 8 infringement. Therefore, even though the U.S. Patent and  
02:50:50 9 Trademark Office has allowed the asserted claims and even  
02:50:53 10 though a patent is presumed to be valid, you, the jury,  
02:50:56 11 must decide whether those claims are invalid after hearing  
02:51:01 12 the evidence presented throughout this case.

02:51:04 13 You may find a patent claim to be invalid for a  
02:51:08 14 number of reasons, including because it claims subject  
02:51:11 15 matter that is not new or because it is obvious.

02:51:16 16 For a patent claim to be invalid because it is not  
02:51:19 17 new, the Defendants must show -- the Defendant in this  
02:51:24 18 case, Supercell, must show by clear and convincing evidence  
02:51:28 19 that all the elements of the claim are sufficiently  
02:51:32 20 described in a single previous printed publication or  
02:51:37 21 patent, and we call these items prior art. If a claim is  
02:51:41 22 not new, it is said to be anticipated by the prior art.

02:51:45 23 Another way that a claim can be found to be  
02:51:49 24 invalid is that it may have been obvious. Even though a  
02:51:54 25 claim is not anticipated because every element of the claim

02:51:57 1 is not shown or sufficiently described in a single piece of  
02:52:01 2 prior art, the claim may still be invalid if it would have  
02:52:05 3 been obvious to a person of ordinary skill in the field of  
02:52:10 4 the technology of the patent at the relevant time.

02:52:13 5           You'll need to consider a number of questions in  
02:52:16 6 deciding whether the invention claimed in the asserted  
02:52:20 7 patents were obvious. And I'll provide you with more  
02:52:24 8 detailed instructions on these questions at the conclusion  
02:52:26 9 of the trial.

02:52:27 10           Another way that a claim can be found to be  
02:52:30 11 invalid is that there may have been a lack of a written  
02:52:34 12 description. A patent may be invalid if its specification  
02:52:41 13 does not describe the claimed invention in sufficient  
02:52:43 14 detail so that one skilled in the art can reasonably  
02:52:46 15 conclude that the inventor actually had possession of the  
02:52:50 16 invention that they are claiming.

02:52:52 17           If you decide that any claim of the  
02:52:56 18 patents-in-suit has been infringed and is not invalid, then  
02:53:03 19 you'll need to decide whether the Defendant's infringement  
02:53:05 20 has been willful. You'll also need to decide what amount  
02:53:10 21 of money damages should be awarded to the Plaintiff to  
02:53:14 22 compensate it for that infringement.

02:53:16 23           A damage award, ladies and gentlemen, must be  
02:53:21 24 adequate to compensate the patentholder for the  
02:53:23 25 infringement. And in no event may a damage be -- award be



02:53:29 1 less than -- than what the patentholder would have received  
02:53:31 2 had it been paid a reasonable royalty for the use of its  
02:53:36 3 patent.

02:53:36 4           However, the damages you award, if any, are meant  
02:53:42 5 to compensate the patentholder, and they are not meant to  
02:53:47 6 punish the Defendant. And you may not include in any  
02:53:51 7 damages award an amount -- an additional amount as a fine  
02:53:55 8 or a penalty above what's necessary to fully compensate the  
02:53:59 9 patentholder for the infringement.

02:54:01 10           Additionally, damages may not be speculative. And  
02:54:07 11 the Plaintiff, GREE, must prove the amount of its damages  
02:54:10 12 for the alleged infringement by a preponderance of the  
02:54:14 13 evidence.

02:54:14 14           Under the patent laws, GREE may only recover  
02:54:18 15 damages for infringement that occurred after the date that  
02:54:22 16 GREE gave notice to Supercell that GREE believed Supercell  
02:54:26 17 was infringing the patents-in-suit.

02:54:30 18           It will be up to you to determine when that notice  
02:54:33 19 was given.

02:54:34 20           And I'll give you more detailed instructions on  
02:54:37 21 the calculation of damages for the Defendant's alleged  
02:54:42 22 infringement of the patents-in-suit at the conclusion of  
02:54:46 23 the trial, including by giving you specific instructions in  
02:54:48 24 regard to the calculation of a reasonable royalty.

02:54:51 25           However, the fact that I'm instructing you on

02:54:56 1 damages now does not mean that GREE is or is not entitled  
02:55:00 2 to recover any damages in this case.

02:55:03 3 Now, ladies and gentlemen, over the course of the  
02:55:07 4 trial, you're going to be hearing from a number of  
02:55:09 5 witnesses in this case, and I want you to keep an open mind  
02:55:13 6 while you're listening to the evidence and not decide any  
02:55:17 7 of the facts until you've heard all of the evidence.

02:55:20 8 This is important. While the witnesses are  
02:55:24 9 testifying, remember that you, the jury, will have to  
02:55:29 10 decide the degree of credibility and the degree of  
02:55:33 11 believability to allocate to each of the witnesses and the  
02:55:36 12 testimony that they offer.

02:55:38 13 So while each of the witnesses are testifying, you  
02:55:43 14 should be asking yourselves things like this:

02:55:47 15 Does the witness impress you as being truthful?  
02:55:50 16 Does he or she have a reason not to tell the truth? Does  
02:55:53 17 he or she have any personal interest in the outcome of the  
02:55:56 18 case? Does the witness seem to have a good memory? Did he  
02:56:02 19 or she have the opportunity and ability to observe  
02:56:05 20 accurately the things that they've testified about? Did  
02:56:08 21 the witness appear to understand the questions clearly and  
02:56:12 22 answer them directly? And, of course, does the witness's  
02:56:16 23 testimony differ from the testimony of any other witness?  
02:56:20 24 And if it does, how does it differ?

02:56:22 25 These are some of the kinds of things that you

02:56:28 1 should be thinking about while you're listening to each of  
02:56:31 2 the witnesses as they testify in this case.

02:56:36 3 I also want to talk to you, ladies and gentlemen,  
02:56:39 4 briefly about expert witnesses.

02:56:42 5 When knowledge of a technical subject may be  
02:56:45 6 helpful to you, the jury, a person who has special training  
02:56:49 7 and experience in that particular technical field, we refer  
02:56:53 8 to them as expert witnesses, they're permitted to testify  
02:56:57 9 to you about that expert opinion -- that expert witness's  
02:57:04 10 opinions on those technical matters.

02:57:06 11 However, you're not required to accept an expert's  
02:57:09 12 or any other witness's opinions at all. It's up to you to  
02:57:13 13 decide whether you believe an expert witness, or any  
02:57:17 14 witness for that fact, and whether you believe what they  
02:57:20 15 say is correct or incorrect and whether you want to give  
02:57:23 16 that testimony any weight whatsoever. Those decisions are  
02:57:27 17 yours as members of this jury.

02:57:29 18 I anticipate that there will be expert witnesses  
02:57:34 19 testifying in support of each side in this case. But when  
02:57:38 20 they do and when they testify, it will be up to you to  
02:57:42 21 listen to their qualifications, and when they give you an  
02:57:45 22 opinion and explain the basis for that opinion, you'll have  
02:57:48 23 to evaluate what they say, whether you believe it, and what  
02:57:54 24 amount of weight, if any, that you want to give it.

02:57:56 25 Remember, ladies and gentlemen, judging and

02:58:00 1 evaluating the credibility and believability of each and  
02:58:03 2 every of the witnesses is an important part of your job as  
02:58:09 3 jurors.

02:58:09 4 Now, during the trial, it's possible that there  
02:58:13 5 will be testimony from one or more witnesses that are going  
02:58:16 6 to be presented to you through what we call a deposition.

02:58:20 7 In trials like this, it's difficult, if not  
02:58:22 8 impossible sometimes, to get every witness here in person  
02:58:26 9 at the same time. So lawyers for each side, prior to the  
02:58:31 10 trial, take the depositions of the witnesses.

02:58:34 11 In a deposition, the witness is present, they are  
02:58:38 12 sworn and placed under oath, a court reporter is present,  
02:58:43 13 just as if the witness were in open court. And the  
02:58:46 14 parties, through their lawyers, ask those witnesses  
02:58:50 15 questions, and those questions and their answers are taken  
02:58:53 16 down and transcribed. Often, they are recorded  
02:58:57 17 additionally as video recordings.

02:58:59 18 Now, it's important to know, ladies and gentlemen,  
02:59:02 19 that during the course of this trial, when these deposition  
02:59:05 20 witnesses are presented to you, you will be seeing clips  
02:59:10 21 from within the total deposition that are put together and  
02:59:13 22 presented to you.

02:59:15 23 Let me explain this. During a typical deposition  
02:59:18 24 of a witness in advance of trial, that deposition can last  
02:59:22 25 many hours, sometimes seven hours or more. To keep you

02:59:27 1 from listening to seven hours of testimony before the  
02:59:30 2 trial, if that witness cannot be here in person and their  
02:59:34 3 testimony is going to be presented through their  
02:59:36 4 deposition, then the parties will pick out the portions of  
02:59:39 5 those recorded questions and answers that they think are  
02:59:42 6 the most important, and those portions of those depositions  
02:59:46 7 will be put together and presented to you as that witness's  
02:59:51 8 testimony during the course of the trial.

02:59:52 9 That means because this is a pasting together of  
02:59:57 10 clips or segments of a much longer deposition, when you see  
03:00:01 11 that deposition presented as a video, it may have breaks in  
03:00:05 12 it, or it may look like it jumps around, or you may start  
03:00:10 13 hearing another person ask questions in a different voice.

03:00:13 14 All of that is so that the entirety of the many  
03:00:15 15 hours' long presentation doesn't have to be played to you,  
03:00:20 16 and just the important parts that both the Plaintiff and  
03:00:23 17 the Defendant think are significant for you to consider are  
03:00:29 18 put together and presented as that deposition testimony in  
03:00:32 19 court.

03:00:32 20 So don't be confused, as sometimes jurors are, by  
03:00:34 21 the unavoidable breaks or changes in voice or things like  
03:00:42 22 that. That's all been looked at by the lawyers and the  
03:00:44 23 Court before it's presented to you.

03:00:45 24 Now, that deposition testimony that will be  
03:00:51 25 presented is entitled to the same consideration, insofar as

03:00:54 1 possible, and is to be judged as to the credibility, weight  
03:00:57 2 and, otherwise, considered by you, the jury, in the same  
03:00:59 3 way as if the witness had appeared in person and testified  
03:01:05 4 physically from the witness stand in open court.

03:01:07 5 Now, during the course of the trial, it's possible  
03:01:11 6 that the lawyers will make certain objections, and when  
03:01:14 7 they do, I will issue rulings on those objections.

03:01:18 8 It's the duty of an attorney to object when they  
03:01:21 9 think certain testimony or other evidence is improper and  
03:01:25 10 should not be offered before the jury under the Rules of  
03:01:28 11 Evidence and the rules of the court.

03:01:29 12 Now, upon allowing the testimony or other evidence  
03:01:34 13 to be introduced over the objection of an attorney, the  
03:01:38 14 Court does not, unless expressly stated, indicate any  
03:01:41 15 opinion as to the weight or the effect of that testimony.

03:01:45 16 As I've said before, you, the jury, are the sole  
03:01:48 17 judges of the credibility and believability of all the  
03:01:52 18 witnesses and the weight and effect to give to all of the  
03:01:55 19 evidence.

03:01:55 20 Now, I'd like to compliment the parties and their  
03:02:00 21 lawyers in this case at this point because before you were  
03:02:05 22 empaneled today, many hours were spent going through many,  
03:02:09 23 many, many documents that might be offered as exhibits in  
03:02:12 24 this case. And the lawyers have made their objections, the  
03:02:16 25 Court has considered those objections and considered the

03:02:20 1 admissibility of those documents under the Rules of  
03:02:25 2 Evidence long before today.

03:02:26 3 And that means, ladies and gentlemen, that that  
03:02:29 4 process has been substantially shortened from what it  
03:02:32 5 otherwise would be.

03:02:33 6 So you will not have to sit there and listen for  
03:02:37 7 hours as document after document is presented, objected to,  
03:02:40 8 argued about, and ruled on. All that's been done. And  
03:02:43 9 that will save us a considerable amount of trial -- time,  
03:02:46 10 rather, going through this trial. And I want to compliment  
03:02:50 11 the lawyers for their efforts in that regard.

03:02:52 12 And that means, ladies and gentlemen, that all the  
03:02:55 13 exhibits in this case that will be shown to you have  
03:02:58 14 previously been considered by the Court and considered and  
03:03:01 15 found to be admissible.

03:03:03 16 That means when one of the parties, through their  
03:03:06 17 counsel, shows you an exhibit, you can consider it's  
03:03:09 18 already been ruled on and found to be admissible by the  
03:03:12 19 Court, and they can simply present it, put it in a context,  
03:03:16 20 and ask you such questions -- or ask the witness such  
03:03:19 21 questions about it as they think are appropriate.

03:03:21 22 And let me assure you, that have saved all of us  
03:03:24 23 hours and hours during the trial that otherwise we would  
03:03:27 24 have to take up. And both sides have worked very hard in  
03:03:31 25 that process, and they're entitled to be recognized for

03:03:34 1 that.

03:03:34 2           However, it's still possible that over the course  
03:03:38 3 of the trial objections will arise. And if I should  
03:03:41 4 sustain an objection to a question addressed to a witness,  
03:03:46 5 then you, the jury, must disregard that question entirely,  
03:03:50 6 and you may draw no inference from its wordings and you may  
03:03:54 7 not speculate about what the witness would have said if I  
03:03:56 8 had allowed them to answer the question.

03:04:03 9           On the other hand, if I overrule an objection to a  
03:04:04 10 question addressed to a witness, then you should consider  
03:04:10 11 the question and the witness's answer just as if no  
03:04:12 12 objection had ever been made.

03:04:13 13           You should understand, ladies and gentlemen, that  
03:04:17 14 the law of the United States permits a United States  
03:04:20 15 District Judge in a trial like this to comment to the jury  
03:04:24 16 regarding the evidence in the case, but such comments on  
03:04:27 17 the evidence are only an expression of the judge's opinion,  
03:04:32 18 and the jury may disregard such comments in their entirety,  
03:04:36 19 because as I've told you, you, the jury, are the sole  
03:04:39 20 judges of the facts, you are the sole judges of the  
03:04:43 21 credibility of the witnesses and how much weight to give to  
03:04:45 22 the testimony.

03:04:45 23           And even though the law permits me to make  
03:04:49 24 comments on the evidence, as I've told you, I intend to try  
03:04:53 25 very hard not to comment on any of the evidence or the



03:04:57 1 witnesses throughout the trial, and you should not take any  
03:05:01 2 comments that you think you see or you see or hear or you  
03:05:04 3 perceive in any way as coming from me as something you  
03:05:07 4 should consider or take into account in deciding what the  
03:05:10 5 facts are -- the ultimate facts are in this case.

03:05:14 6 Now, the court reporter in front of me,  
03:05:17 7 Ms. Holmes, takes down every word that is said in the  
03:05:20 8 courtroom during the trial. That's why it's part of my job  
03:05:23 9 to try and keep people from talking together at the same  
03:05:27 10 time so that it can be heard and understood and taken down  
03:05:29 11 accurately.

03:05:31 12 But the written transcript of what she takes down  
03:05:34 13 and what's presented over the course of the trial is not  
03:05:37 14 going to be available to you to take back and review and  
03:05:41 15 consider with you when you're in the jury room deliberating  
03:05:44 16 on your verdict. So you are going to have to rely on your  
03:05:48 17 memory of the evidence presented through the course of the  
03:05:51 18 trial.

03:05:51 19 In the moment -- in a moment, rather, ladies and  
03:05:55 20 gentlemen, you'll each be given a juror notebook, and in  
03:05:58 21 the back of these notebooks, you'll find a blank legal pad  
03:06:01 22 that you can use to take notes on during the trial if you  
03:06:04 23 choose to. It's up to each of you to decide whether or not  
03:06:07 24 you want to take notes over the course of the trial, and if  
03:06:10 25 you do, how detailed you want your notes to be.

03:06:12 1 But, remember, if you take notes, your notes are  
03:06:17 2 for your own personal use, and you still have to rely on  
03:06:19 3 your memory of the evidence, and that's why you should pay  
03:06:22 4 close attention to the testimony of each and every witness.

03:06:27 5 You should not abandon your own recollection of  
03:06:30 6 the evidence because somebody else's notes indicate  
03:06:33 7 something different. Your notes are to refresh your  
03:06:37 8 recollection, and that's the only reason you should be  
03:06:40 9 keeping them, if you decide to take notes over the course  
03:06:43 10 of the trial.

03:06:44 11 I'm now going to ask our Court Security Officer,  
03:06:47 12 Mr. Fitzpatrick, to hand out these juror notebooks to each  
03:06:51 13 of the members of the jury.

03:07:18 14 In these notebooks, ladies and gentlemen, you'll  
03:07:30 15 see that you each have a copy of the five asserted patents  
03:07:33 16 that we've talked about.

03:07:35 17 You'll also find that you have a chart of the  
03:07:39 18 language from the asserted claims that has been construed  
03:07:43 19 and interpreted by the Court.

03:07:45 20 You'll see on one side of that page, the actual  
03:07:49 21 language from the claims, and you'll see the constructions  
03:07:51 22 or interpretations on the other side corresponding to it  
03:07:54 23 that the Court has already reached and about which I have  
03:07:57 24 told you you will have to use my constructions and  
03:08:00 25 interpretations of that language when you decide the

03:08:03 1 issues, such as infringement and invalidity.

03:08:06 2 Also, in those notebooks, you will find that there  
03:08:10 3 are tabbed pages for each of the witnesses that may testify  
03:08:13 4 in this case. And on each of those pages, you should find  
03:08:18 5 a head-and-shoulders' photograph of that witness with their  
03:08:22 6 name and additional lines there to take additional notes if  
03:08:25 7 you wish to.

03:08:26 8 The Court has found that over the course of a  
03:08:29 9 lengthy trial, it's very helpful to the jury, especially  
03:08:33 10 when there are several witnesses who testify, to be able to  
03:08:35 11 look back and see a picture of the person that actually  
03:08:38 12 testified and to tie that picture to the notes that you  
03:08:41 13 take. So that's why those witness pages are in there for  
03:08:44 14 your use.

03:08:45 15 And, as I mentioned, there's a legal pad at the  
03:08:48 16 back of those notebooks that you can use to take additional  
03:08:51 17 notes on if you choose, and you should find in the front  
03:08:54 18 cover a pen to use in case you don't have one with you.

03:08:57 19 Now, in a moment, the lawyers are going to present  
03:09:02 20 their opening statements, and these opening statements,  
03:09:06 21 ladies and gentlemen, are designed to give you a roadmap of  
03:09:09 22 what each side expects the evidence will be in this case.

03:09:13 23 You should remember throughout the trial that what  
03:09:16 24 the lawyers tell you is not evidence. The evidence is the  
03:09:21 25 sworn testimony that you will hear from the witnesses

03:09:25 1 presented in open court and subject to cross-examination,  
03:09:28 2 and the evidence are those exhibits which the Court has  
03:09:32 3 already deemed to be admissible and which are presented to  
03:09:34 4 you over the course of the trial. That is the totality of  
03:09:39 5 the evidence in this case.

03:09:41 6 But what the lawyers tell you, since it's not  
03:09:46 7 evidence, you should consider that it's their impression of  
03:09:49 8 what they hope the evidence will be. And they have a duty  
03:09:53 9 to point out to you what they believe the evidence will  
03:09:56 10 show. But just remember, what the lawyers tell you now and  
03:10:00 11 throughout this trial is not evidence.

03:10:03 12 After the opening statements, ladies and  
03:10:06 13 gentlemen, the Plaintiffs will then call their witnesses  
03:10:09 14 and put on their evidence. This is referred to as the  
03:10:12 15 Plaintiff's case-in-chief.

03:10:15 16 And once the Plaintiffs have presented their  
03:10:17 17 witnesses and their evidence, they will rest their  
03:10:20 18 case-in-chief.

03:10:22 19 When the Plaintiffs rest their case-in-chief, then  
03:10:25 20 the Defendants will come forward and call their witnesses  
03:10:28 21 and put on their evidence in what is referred to as the  
03:10:31 22 Defendant's case-in-chief.

03:10:34 23 Once the Defendants have completed that process,  
03:10:37 24 the Defendant will rest its case-in-chief.

03:10:41 25 At that point, the Plaintiff has the option to

03:10:43 1 bring additional witnesses to rebut the testimony presented  
03:10:48 2 by the Defendant. And that's called the Plaintiff's  
03:10:52 3 rebuttal case. The Plaintiff may, but does not have to,  
03:10:56 4 present rebuttal evidence in a trial like this.

03:10:59 5 At the end of all the evidence, which would mean  
03:11:02 6 if there is a Plaintiff's rebuttal case, when that is  
03:11:04 7 completed, or if the Plaintiff does not call rebuttal  
03:11:07 8 witnesses, then when the Defendant rests its case-in-chief,  
03:11:12 9 again, when all the evidence is presented, then I will give  
03:11:15 10 you additional final instructions on the law that you are  
03:11:19 11 to apply in this case.

03:11:21 12 Those final instructions from me to you are often  
03:11:24 13 called the Court's final instructions to the jury. And  
03:11:27 14 they're often called by other folks the Court's charge to  
03:11:31 15 the jury.

03:11:31 16 Once I have given you my charge to the jury, my  
03:11:36 17 final instructions on the law, then the attorneys for the  
03:11:39 18 parties will present their closing arguments.

03:11:42 19 The Plaintiff will present its first closing  
03:11:44 20 argument, followed by the Defendant's closing argument.  
03:11:47 21 And then the Plaintiff, because it has the burden of proof,  
03:11:50 22 will get to present a final closing argument.

03:11:52 23 Once you have heard all the closing arguments from  
03:11:56 24 counsel for the parties, then I will instruct you to retire  
03:12:00 25 to the jury room and to consider your verdict and the

03:12:03 1 questions therein and reach a unanimous decision as to how  
03:12:08 2 to answer those questions.

03:12:09 3 Let me repeat my earlier instruction to you.  
03:12:13 4 You're not to discuss this case at all with anyone  
03:12:18 5 throughout this trial, including among the eight of  
03:12:20 6 yourselves.

03:12:22 7 Only when all the evidence is complete, when  
03:12:25 8 you've heard my final instructions, when you've heard  
03:12:29 9 closing arguments from the lawyers, and when I have  
03:12:31 10 instructed you to retire to the jury room and to deliberate  
03:12:35 11 on your verdict, only then are you to discuss the evidence  
03:12:40 12 in this case.

03:12:41 13 And at that point, as I mentioned, things shift  
03:12:45 14 180 degrees, and we go from you not being able to discuss  
03:12:49 15 the evidence among yourselves to where you are required to  
03:12:53 16 discuss the evidence among yourselves in an effort to reach  
03:12:56 17 a unanimous decision as to the answers to the questions  
03:13:00 18 contained in the verdict form.

03:13:01 19 Let me remind you again, throughout this trial,  
03:13:06 20 when you see or come in contact with any of the  
03:13:08 21 participants in the trial, any of the trial teams or the  
03:13:12 22 parties, the witnesses, they're not going to enter into any  
03:13:17 23 conversation with you, be friendly, be gregarious, or act  
03:13:21 24 like we often do in East Texas. That's because that's what  
03:13:24 25 I have instructed them to do. So when that happens, don't

03:13:28 1 consider this person or that person to be rude or  
03:13:31 2 unfriendly. Don't hold it against them. They're simply  
03:13:34 3 doing what the Court has instructed them to do.

03:13:37 4 All right. At this juncture, we will now proceed  
03:13:41 5 with opening statements from counsel for the parties.

03:13:44 6 Plaintiff may now present its opening statement to  
03:13:48 7 the jury.

03:13:48 8 MR. MOORE: Thank you, Your Honor.

03:13:49 9 THE COURT: Would you like a warning on your time,  
03:13:51 10 counsel?

03:13:52 11 MR. MOORE: I would, Your Honor. At 15 minutes  
03:13:54 12 and 3 minutes, please.

03:13:55 13 THE COURT: 15 and 3.

03:13:56 14 MR. MOORE: Thank you.

03:13:57 15 THE COURT: All right. You may proceed when  
03:13:58 16 you're ready.

03:13:59 17 MR. MOORE: May it please the Court.

03:14:34 18 THE COURT: Please proceed.

03:14:34 19 MR. MOORE: Thank you, Your Honor.

03:14:35 20 Good afternoon, ladies and gentlemen. And once  
03:14:39 21 again, thank you for your service. I know it's already  
03:14:42 22 been a long day, but I'm privileged and honored to be in  
03:14:46 23 front of you to present the Plaintiff, GREE's, opening  
03:14:51 24 statement in this trial.

03:14:52 25 But before I do that, I'd like to make a few more

03:14:55 1 introductions.

03:14:55 2 My co-counsel and friend, Ms. Smith, introduced  
03:14:59 3 herself this morning. So I'd like to introduce myself and  
03:15:02 4 the others sitting at our table.

03:15:03 5 My name is Steve Moore, and I grew up a little bit  
03:15:07 6 all over the place, but I spent most of my childhood in  
03:15:11 7 Louisiana outside of New Orleans.

03:15:13 8 I lived in Georgia, in North Carolina after that  
03:15:17 9 where I went to school and met my wife. And a few years  
03:15:20 10 ago we moved out to the West Coast in California. We've  
03:15:20 11 been married for over 25 years.

03:15:25 12 I've got two children. I've got a son, who's 20  
03:15:28 13 years old, and a daughter, who is 16. And like most kids  
03:15:31 14 these days, they're just trying to figure how to navigate  
03:15:35 15 this new school year that they're finding themselves  
03:15:38 16 dealing with.

03:15:38 17 I'd also like to introduce my client, Mr. Eiji  
03:15:42 18 Araki.

03:15:44 19 Mr. Araki, would you please stand and say hello to  
03:15:46 20 the jury? Thank you. Mr. -- you may sit. Thank you.

03:15:48 21 Mr. Araki has come from Tokyo, Japan, for this  
03:15:53 22 trial, to show how important it is to GREE. He is a senior  
03:15:56 23 vice president at GREE. He's in charge of the gaming  
03:15:58 24 division of GREE. And he's on the board of directors of  
03:16:02 25 GREE. And you'll hear testimony from him in this trial



03:16:04 1 tomorrow. So he'll get a chance to visit with you then.

03:16:08 2 Now, I'd also like to introduce my law partner and  
03:16:12 3 good friend, Ms. Taylor Ludlam. Ms. Ludlam and I have  
03:16:16 4 worked together for many years. And you will hear from  
03:16:19 5 her, as well, in the trial. And Ms. Ludlam and Ms. Smith  
03:16:22 6 and I will be presenting the witnesses and arguments for  
03:16:24 7 the Plaintiff's side in this trial.

03:16:26 8 So now that I've -- we've introduced ourselves, I  
03:16:30 9 want to get on to what this case is about.

03:16:31 10 And you heard a bit -- a little bit of discussion  
03:16:35 11 this morning about the gaming industry and video games in  
03:16:39 12 particular. And we had some debate back and forth on that,  
03:16:42 13 and that's what this case is about.

03:16:44 14 And as Ms. Smith said, we've got to put ourselves  
03:16:48 15 really back 15 to 20 years. And I started thinking about  
03:16:53 16 that when I was thinking about how old my kids are now.  
03:16:56 17 It's hard to believe it's been 20 years since it turned  
03:16:59 18 2000, but it has.

03:17:01 19 But back then, we didn't have any iPhones. We  
03:17:03 20 didn't have Facebook to check. We didn't have Twitter to  
03:17:07 21 use to tweet.

03:17:08 22 And in the gaming world, video games were very  
03:17:10 23 different back then. As Ms. Smith said, you had to save up  
03:17:14 24 your money to buy a game. You couldn't just download it  
03:17:16 25 for free and play it. And if you spent 40 or \$50.00 on a

03:17:20 1 game, you didn't know if you would like it. And if you  
03:17:24 2 didn't like it, well, you were out the money. And also if  
03:17:26 3 you did like it, it didn't really ever change.

03:17:31 4 Well, GREE is a company that helped to change all  
03:17:34 5 that for those that are interested in gaming. It is a  
03:17:36 6 pioneer in what is called mobile social games. Mobile  
03:17:39 7 because they're played on a phone or tablet or other mobile  
03:17:43 8 device, and social because you play with other people, not  
03:17:46 9 necessarily just people who come over to your house to play  
03:17:48 10 but people in your neighborhood, people in your state,  
03:17:50 11 people across the country.

03:17:52 12 And, also, you've heard the word "freemium"  
03:17:54 13 already, and we'll talk about that in a moment. You don't  
03:17:56 14 have to pay to play them. You try them out. If you don't  
03:17:59 15 like them, don't play them. Or you can play as long as you  
03:18:02 16 want without paying. But if you do want to access  
03:18:05 17 additional features or levels and so forth, there are also  
03:18:09 18 options to pay and get ahead and advance quicker.

03:18:12 19 And that's the type of games that this case is  
03:18:14 20 about. That's the type of games that GREE helped  
03:18:17 21 revolutionize and has been making for many years. And  
03:18:20 22 those are the games that Supercell makes that infringe  
03:18:22 23 GREE's patents.

03:18:23 24 Now, as you saw in the video this morning, there's  
03:18:27 25 actually a very important constitutional right. There are

03:18:30 1 two constitutional rights actually involved in this case.

03:18:33 2 The first one relates to patents.

03:18:35 3 Patents are enshrined in the U.S. Constitution,  
03:18:37 4 and our founders gave government the right and the power  
03:18:40 5 and the ability to grant patents to those who make  
03:18:43 6 inventions, to give them protection from other people using  
03:18:47 7 them. That's exactly what GREE did.

03:18:50 8 GREE did the right thing. When it made  
03:18:52 9 inventions, it sought and received patents on those  
03:18:55 10 innovations. And it did it not only in its home country of  
03:18:58 11 Japan but also here in the United States because it's a  
03:19:00 12 market that it serves and it's a market where its  
03:19:02 13 competitors are, as well.

03:19:04 14 The second constitutional right you heard  
03:19:07 15 His Honor speak about earlier today, and that's the right  
03:19:08 16 to a trial by jury. And that right is important here  
03:19:12 17 because Supercell has used GREE's technology, but refuses  
03:19:17 18 to pay for it.

03:19:18 19 And so our only option is to file a lawsuit in  
03:19:22 20 U.S. District Court and to seek to hold Supercell  
03:19:26 21 responsible for its decision not to pay for its  
03:19:30 22 infringement of GREE's patents.

03:19:31 23 And that's why we're here in front of you at this  
03:19:35 24 trial.

03:19:35 25 Now, let me back up and give a little more

03:19:38 1 background. First, on the history of gaming, those as old  
03:19:42 2 as I might remember the arcade games that we used to spend  
03:19:42 3 our quarters on back in the '70s and '80s.

03:19:46 4 As time progressed, we got into more consoles,  
03:19:51 5 handhelds like Gameboys and so forth. They all used  
03:19:54 6 cartridges and had to go to GameStop or wherever or Walmart  
03:19:58 7 and buy them. And now we're here to talk about these  
03:20:01 8 mobile social server-based games. And that's what GREE  
03:20:04 9 helped revolutionize in the industry, as I say, about 15  
03:20:07 10 years ago or so.

03:20:09 11 A little background on GREE. It was founded by a  
03:20:12 12 gentleman named Yoshikazu Tanaka -- Mr. Tanaka in Tokyo,  
03:20:16 13 Japan, in 2004. And he was inspired by what he saw in the  
03:20:21 14 United States innovation and technology industry.

03:20:24 15 And so he decided he would start a social media  
03:20:27 16 company, which he did. He named it GREE. And that name  
03:20:31 17 comes from the concept of six degrees of separation.  
03:20:33 18 That's where the GREE comes from.

03:20:35 19 And that's the idea, you may have heard of it,  
03:20:37 20 that everybody on this planet is connected within six  
03:20:40 21 degrees of connection to each other; that your friend might  
03:20:43 22 know another friend and so forth, and pretty soon you get  
03:20:46 23 all the way around the world. And that's how the company  
03:20:48 24 started in social media.

03:20:50 25 But it got into gaming pretty quick, within a

03:20:52 1 couple of years. It's now grown to where it's about 1700  
03:20:55 2 employees, 400 of which are engineers. And it's got more  
03:20:58 3 than 1800 patents and applications around the world.

03:21:01 4 Now, the first game that GREE introduced to the  
03:21:06 5 world, and, indeed, the first mobile social game was a  
03:21:11 6 game named Fishing Star.

03:21:12 7 As the name suggests and as you can see from the  
03:21:16 8 graphics, it was about fishing. You could fish and you  
03:21:18 9 could fish with your friends and you could compete, you  
03:21:21 10 could enter tournaments, go to different islands, catch  
03:21:26 11 different species, all sorts of things like that. That  
03:21:28 12 came out in 2007, and it's still here today on the market.

03:21:31 13 And that game, in addition to being mobile and  
03:21:33 14 social, was called freemium. And that's just, of course, a  
03:21:39 15 blend between free and premium. And what that means, as I  
03:21:42 16 said at the beginning, you don't have to pay. Play it all  
03:21:45 17 you want. But if you want to pay and get ahead a little  
03:21:47 18 bit quicker, you can do that.

03:21:49 19 The other thing you'll hear a lot about in this  
03:21:52 20 trial for these types of games is that they run on a  
03:21:55 21 network. And, in fact, you need a network to manage these  
03:22:00 22 games. You need what are called servers, which are  
03:22:02 23 essentially more powerful computers that sit somewhere --  
03:22:07 24 typically in a warehouse or a server farm, I think they're  
03:22:11 25 called, could be around the country.

03:22:12 1 And what they do is manage all these devices that  
03:22:15 2 are connected to the network, such as your phones and your  
03:22:18 3 tablets.

03:22:19 4 So if you play one of these games and you're  
03:22:22 5 playing with folks either down the street or across the  
03:22:25 6 country, it's all managed by a server that runs the game.  
03:22:28 7 Because after all, if you're playing with your friend, if  
03:22:31 8 you're playing this fishing game with your friend and let's  
03:22:33 9 say you're on the same boat in the game and you're casting  
03:22:37 10 your hook side-by-side, both phones need to know what the  
03:22:41 11 other is doing.

03:22:41 12 And so all the traffic will come up from the phone  
03:22:44 13 through your cellular or WiFi network, whatever it may be,  
03:22:46 14 and get to the server, and the server keeps track of all of  
03:22:49 15 that so your friend sees when you catch a big one and you  
03:22:53 16 see when your friend doesn't catch a big one. So that's  
03:22:56 17 how these games work, and you'll hear -- you will hear all  
03:22:58 18 about that.

03:22:59 19 GREE expanded, and eventually -- oops, a little  
03:23:05 20 far ahead there, there we go -- eventually introduced games  
03:23:10 21 in the United States and around 2011, actually entered the  
03:23:13 22 market and opened an office here in California. And it --  
03:23:17 23 and it offered a number of games in the U.S., several of  
03:23:21 24 which were hits.

03:23:22 25 We've shown here on the right, at this particular

03:23:24 1 point in time, it had three games in the top 10. And --  
03:23:28 2 and so GREE has gone on from Fishing Star to introduce a  
03:23:32 3 number of other games, and you'll hear all about that from  
03:23:35 4 Mr. Araki.

03:23:35 5 Now, GREE today is still gaming, of course, also  
03:23:39 6 does things like live events, virtual concerts which have  
03:23:46 7 become more popular these days, as well as virtual reality,  
03:23:48 8 and other technology, entertainment and media type  
03:23:52 9 businesses.

03:23:52 10 Now, let's get to the patents that we're here to  
03:23:54 11 talk about. And, first, this is an image from the video  
03:23:57 12 you saw this morning.

03:23:58 13 What infringement really is -- is trespassing.  
03:24:03 14 These patents, and these are the originals of the five GREE  
03:24:08 15 patents that were granted to it by the Patent Office that  
03:24:10 16 we'll be talking about through this trial.

03:24:11 17 These patents are just like the deed to property.  
03:24:15 18 Just as a deed to property specifies the limits of your  
03:24:20 19 boundaries, these patents, and specifically the claims,  
03:24:23 20 specify the limits of your intellectual property rights,  
03:24:26 21 and that's exactly what -- what this case is about.

03:24:31 22 Now, you've just been given the notebooks by the  
03:24:35 23 Court. And in those notebooks -- I've got a copy of one --  
03:24:41 24 you have copies of the GREE patents, and I want to spend a  
03:24:44 25 moment talking with you about that.

03:24:46 1 As has been noted, there are five patents at  
03:24:49 2 issue, and so if -- if you want to follow along, you don't  
03:24:51 3 have to, but feel free if you'd like to follow along. I  
03:24:55 4 just want to walk through real quickly, at the second tab  
03:24:59 5 which is U.S. patent 9,597,594.

03:25:02 6 As you heard, we typically call patents by the  
03:25:07 7 last three numbers so we don't have to say all those  
03:25:10 8 numbers every time. And so this is the '594 patent. And  
03:25:12 9 it's got different parts. It's the first patent you'll be  
03:25:17 10 hearing about in this case.

03:25:18 11 The front page has a whole lot of information  
03:25:20 12 about when it was granted, when it was applied for, it's  
03:25:23 13 got an abstract, it's got information on prior art that the  
03:25:27 14 Patent Office looked at as part of it.

03:25:28 15 If you keep flipping through, you'll start to see  
03:25:31 16 drawings, figures, and those are just examples of the  
03:25:35 17 invention and how the inventor thought that the invention  
03:25:37 18 might be able to put in place -- drawn in a visual manner.

03:25:42 19 Once you get through all these drawings, you get  
03:25:45 20 to pretty dense text, and that's called the specification.  
03:25:49 21 And the specifications serves to specify what the invention  
03:25:54 22 is, to give examples, real detailed examples of how the  
03:25:58 23 invention works.

03:25:59 24 And the way the specification is organized is  
03:26:05 25 through these columns that you see.



03:26:07 1 So if you look at the top there, you see  
03:26:09 2 Column Nos. 1, 2, 3, 4 across the top. And in the middle  
03:26:13 3 of the page, there's numbers, every five numbers, 5, 10,  
03:26:13 4 15, et cetera.

03:26:13 5 So you might hear over the course of the trial a  
03:26:20 6 witness or the attorneys talk about column and line number  
03:26:21 7 to direct you to a certain part of the patent, and that's  
03:26:23 8 what we're talking about here. We'd be pointing to  
03:26:26 9 different parts of the patent to -- to refer to.

03:26:27 10 Now, at the very end of the specification, if you  
03:26:32 11 flip all the way to the end -- and in this patent, it's the  
03:26:34 12 second to last page where they start, but that's where the  
03:26:37 13 claims are.

03:26:39 14 So if you go all the way to Column 26 and you  
03:26:42 15 start around Line 30, it says what is claimed is, and then  
03:26:48 16 there is a No. 1 and then some text and a No. 2 and text  
03:26:53 17 and so forth and so on.

03:26:54 18 And that's what we'll be talking about as the --  
03:26:56 19 the property boundaries of GREE's technology. And that's  
03:27:01 20 what we will be showing you when we show you how Supercell  
03:27:04 21 infringes the GREE patents.

03:27:05 22 For example, we're going to look through  
03:27:08 23 Claim 2 -- Claim 1 and Claim 2, but in particular Claim 2  
03:27:12 24 of the '594 patent. And you see in both of these claims,  
03:27:16 25 you find the word "templates."

03:27:18 1 If you look at Claim 2, it's the third line down  
03:27:21 2 in Claim 2 at the third word in. It actually appears in  
03:27:25 3 the second line, as well. It appears in Claim 1, as well.

03:27:27 4 So you're going to hear about templates, and  
03:27:29 5 that's the shorthand we've used for this '594 patent that  
03:27:32 6 I've shown on the slide here. We're going to refer to it  
03:27:36 7 in shorthand as the '594 template patent. So you'll hear  
03:27:39 8 evidence about why Supercell's games have this template  
03:27:42 9 that's in the claims.

03:27:42 10 And the same will be true for the other four  
03:27:45 11 patents. And we can -- again, in shorthand, we're calling  
03:27:48 12 the '137 and the '481 the battle patents because they  
03:27:51 13 relate to a particular type of battle game.

03:27:55 14 And the '655, the donation patent, because it  
03:27:59 15 relates to ways for players of games to be able to donate  
03:28:02 16 to each other.

03:28:03 17 And, lastly, the '873 shooting patent, which  
03:28:08 18 relates to these touchscreen shooting games.

03:28:11 19 So those are the patents, and what the inventions  
03:28:13 20 of the patents do is generally they provide features and  
03:28:16 21 technology that helps keep users interested in the games,  
03:28:19 22 that increase user engagement.

03:28:22 23 And that's the industry buzz word that you'll hear  
03:28:25 24 people talk about in terms of, are our games engaging? Do  
03:28:29 25 people want to play them? Do they want to download them

03:28:32 1 and play them? And that's what these patents are about is,  
03:28:35 2 how do we help keep games engaging?

03:28:38 3 But -- let me pause for a moment and talk about  
03:28:42 4 another reason and why we're here.

03:28:44 5 Here we go.

03:28:46 6 And we're here because Supercell simply won't take  
03:28:52 7 responsibility for its actions. Supercell knows that it is  
03:28:57 8 using GREE's patented technology.

03:29:00 9 Why do I say it knows that? Because Supercell  
03:29:05 10 agreed to a license with GREE to use GREE's patents in  
03:29:10 11 Japan. The parties have already entered into that license,  
03:29:14 12 and Supercell paid GREE for the permission to use the  
03:29:17 13 patents that GREE owns in Japan.

03:29:19 14 But Supercell has refused to pay to use the same  
03:29:24 15 types of inventions in the United States. It has paid  
03:29:28 16 nothing for using GREE's patented technology, and that's  
03:29:31 17 why we're here today.

03:29:32 18 And there's one more thing I want you to remember  
03:29:38 19 when we think about why that is.

03:29:40 20 May I approach, Your Honor?

03:29:42 21 THE COURT: You may.

03:29:43 22 MR. MOORE: Thank you.

03:29:44 23 THE COURT: 15 minutes have been used, you have 15  
03:29:45 24 minutes remaining.

03:29:49 25 MR. MOORE: Thank you.

03:29:52 1 I've written 7X, and what that means is how much  
03:29:57 2 more money Supercell makes in the United States than it  
03:29:59 3 makes in Japan. It makes seven times the revenues here  
03:30:03 4 than it does in Japan, and that's why we're here, because  
03:30:07 5 they won't pay us to use the same patents they already paid  
03:30:10 6 to use in Japan when they released their games in the  
03:30:13 7 United States.

03:30:13 8 And we will prove to you that Supercell infringes  
03:30:18 9 these patents through these three games, Clash of Clans for  
03:30:22 10 the '594, Clash Royale for the '137 and '481 and the '655,  
03:30:29 11 and Brawl Stars for the '873.

03:30:31 12 And when I say seven times the revenues, they've  
03:30:35 13 made quite a bit of money. As you can see here, for these  
03:30:40 14 three games alone, just in the United States and just since  
03:30:44 15 they started infringing, Supercell has made well over a  
03:30:48 16 billion dollars. In fact, it's over 1.1 billion, with a B,  
03:30:53 17 dollars in the United States.

03:30:57 18 Now, in a moment after the openings, you'll hear  
03:31:00 19 from GREE's first witness.

03:31:06 20 Dr. Akl, are you -- Professor Akl, are you in the  
03:31:06 21 courtroom?

03:31:06 22 Thank you.

03:31:07 23 This is Professor and Dr. Robert Akl, he's coming  
03:31:08 24 from Dallas where he's a tenured professor at the  
03:31:12 25 University of North Texas, and he's going to tell you why

03:31:13 1 Supercell infringes GREE's patents.

03:31:15 2           There's a lot of discussion this morning about,  
03:31:18 3 you know, don't -- don't just trust what the lawyers are  
03:31:21 4 telling you, believe the evidence, and we fully agree with  
03:31:24 5 that, and we want you to see this evidence.

03:31:27 6           He's going to show you both the games and he's  
03:31:29 7 going to go under the hood and show you the source code of  
03:31:32 8 the games, that is, how the games are written and the  
03:31:35 9 language used and executed by the computer.

03:31:36 10           And he'll tell you that he found GREE's patented  
03:31:39 11 technology in Supercell's source code, and we will show  
03:31:41 12 that to you how every word of the claims at issue are  
03:31:46 13 present and why they're infringed.

03:31:47 14           And burden of proof, we've addressed this already.  
03:31:49 15 We will more than meet our burden of proof, which is 50.1  
03:31:53 16 percent, roughly, preponderance of the evidence, more  
03:31:56 17 likely than not.

03:31:57 18           And so, in other words, if all the evidence that  
03:31:59 19 you heard in this trial so far were stacked up on a scale  
03:32:03 20 and it was exactly equally, how much more evidence do we  
03:32:09 21 have to show for you to find infringement? And the answer  
03:32:12 22 is very little additional evidence. We've just got to tip  
03:32:15 23 that scale a little bit, but we're going to tip it a whole  
03:32:16 24 lot, starting with Dr. Akl's testimony.

03:32:18 25           Now, as I said, Supercell also knows that it

03:32:22 1 infringes, and why do I say that? Well, let's -- let's  
03:32:25 2 look at the timing a little bit.

03:32:27 3 Here we've got some of the opening dates when GREE  
03:32:30 4 was founded, when Fishing Star was launched, and then when  
03:32:33 5 Supercell was -- was founded a few years later.

03:32:36 6 Well, some years after that, GREE discovered that  
03:32:39 7 Supercell was infringing its patents. And so what did GREE  
03:32:42 8 do? It didn't file a lawsuit. GREE sent Supercell a  
03:32:45 9 letter in 2016 and said, you're infringing our patents.  
03:32:50 10 And this is from Plaintiff's Trial Exhibit 475, the letter  
03:32:53 11 that GREE sent and said, we believe you're infringing our  
03:32:56 12 patents.

03:32:57 13 And at the bottom there of what I've highlighted  
03:33:01 14 here, GREE said, you know, at this point, we don't know if  
03:33:03 15 we want to go to court over these. We'd really rather  
03:33:07 16 resolve this, and please let us know if you'll negotiate  
03:33:10 17 with us over this.

03:33:10 18 Well, Supercell didn't agree to license. And so  
03:33:13 19 some months later, GREE was forced to file a lawsuit in  
03:33:17 20 Japan. And in the summer of 2017, it did so, and it filed  
03:33:22 21 a number of lawsuits in Japan.

03:33:23 22 About a year and a half later after those lawsuits  
03:33:25 23 went on, Supercell agreed finally to take a license.  
03:33:31 24 Again, only for the Japanese patents. But it refused, and  
03:33:35 25 that's what we're showing here. This is Plaintiff's Trial

03:33:38 1 Exhibit 480 that you'll take a look at.

03:33:40 2 So it took a license there, but, again, it refused  
03:33:43 3 to do it in the United States. And three weeks later GREE  
03:33:47 4 filed these lawsuits that bring us here today in this  
03:33:52 5 court.

03:33:52 6 Again, why wouldn't Supercell license? Seven  
03:33:55 7 times the revenue in the United States.

03:33:57 8 Supercell also ignored our patents. And let's  
03:34:00 9 take a look at the '594 as an example.

03:34:02 10 So when Supercell released Clash of Clans, it  
03:34:06 11 didn't have a feature called the copy layout that you're  
03:34:08 12 going to hear a lot about, and that was in 2012.

03:34:12 13 Four years later GREE told Supercell about the  
03:34:16 14 patent application that eventually was granted as the '594  
03:34:19 15 patent.

03:34:20 16 And that patent -- this is the letter, and we told  
03:34:22 17 them exactly the application number. That patent then was  
03:34:26 18 granted about six months later. And about six months after  
03:34:30 19 that, even Supercell admits, well, yeah, we knew about that  
03:34:34 20 patent. They admitted that in a sworn statement in this  
03:34:37 21 litigation.

03:34:38 22 But you'll hear I think their party line, which  
03:34:40 23 is, well, we don't really follow GREE. We don't really  
03:34:43 24 monitor them. We don't really know what they're doing very  
03:34:45 25 much. But we're going to show you, and I'm going to show

03:34:48 1 you right now, some exhibits that reflect what Supercell  
03:34:50 2 says when it thinks no one else is listening. What does it  
03:34:55 3 say in private?

03:34:56 4 And this is from internal Supercell messages after  
03:34:59 5 it learned of the '594 patent. In those messages,  
03:35:02 6 Supercell said a number of things.

03:35:07 7 First of all, it said, copy layout, what do you  
03:35:09 8 guys think? That's from this individual Marika Appel.  
03:35:16 9 Darian Vorlick, it definitely saves a lot of time.

03:35:18 10 Another message, I have been wishing for something  
03:35:21 11 like this ever since I have been helping out.

03:35:23 12 And this is from Plaintiff's trial Exhibit 73 and  
03:35:27 13 606 that we'll show you.

03:35:27 14 And then some months later an individual named  
03:35:32 15 Tommi Suvinen, who used to be the head of Clash of Clans  
03:35:38 16 said this: Copying templates/layouts might be part of the  
03:35:42 17 GREE patent.

03:35:43 18 They knew full well about our patent and what it  
03:35:46 19 covered, and they talked about it internally.

03:35:48 20 But what did they do, about a month after that in  
03:35:51 21 June of 2018, they updated Clash of Clans and added copy  
03:35:56 22 layout anyway. And we'll show you that, and this is their  
03:36:04 23 release notes from that.

03:36:05 24 So it is not only infringing, but it is willfully  
03:36:08 25 infringing GREE's patents here in the United States, and it



03:36:10 1 refuses to pay. And we'll show you that for all five of  
03:36:14 2 the patents.

03:36:14 3 Now, on the question of damages, we're going to  
03:36:19 4 show you two -- we're going to show you, and you'll hear  
03:36:22 5 from two witnesses.

03:36:24 6 First of all, Dr. David Neal, who is in the  
03:36:27 7 courtroom. Dr. Neal is a professor and a Ph.D. and does  
03:36:31 8 surveys, and he surveyed what Supercell players think is  
03:36:35 9 important in their games. And a lot of them said these  
03:36:39 10 features covered by GREE's patents are important in the  
03:36:41 11 games, make them want to play them more, make them more  
03:36:43 12 engaged.

03:36:43 13 You'll also hear from Dr. Becker, who is going to  
03:36:46 14 come up from Austin, and I think talk with you on Monday,  
03:36:49 15 and he's a financial expert, a Ph.D. in economics. He  
03:36:52 16 analyzed a whole lot of numbers, revenue and user data,  
03:36:58 17 crunched a lot of numbers, and he will present you his  
03:37:00 18 opinion on what he thinks a reasonable royalty for  
03:37:03 19 Supercell's use of the patents is.

03:37:04 20 And what he will show you is that on this 1.1,  
03:37:08 21 almost \$1.2 billion that he believes that GREE should be  
03:37:12 22 paid by Supercell for these five patents, between 18 and a  
03:37:16 23 half and 24 and a half million dollars, ranging, depending  
03:37:20 24 on the patent, from .7 percent to 2.4 percent of  
03:37:24 25 Supercell's revenues.

03:37:25 1 Now, you'll also hear about what was paid in the  
03:37:30 2 license in Japan, and you'll hear some about that later in  
03:37:33 3 the trial.

03:37:33 4 But I don't want you to be confused by that.  
03:37:36 5 Again, the light -- the market here is seven times higher,  
03:37:39 6 so what was paid in Japan is not necessarily an indicator  
03:37:42 7 of what ought to be paid in the market where somebody makes  
03:37:45 8 seven times more money.

03:37:46 9 Now, what will Supercell say in response? They're  
03:37:51 10 going to offer quite a few excuses, I think, for their  
03:37:54 11 conduct.

03:37:55 12 First, they'll say, well, we're not infringing.  
03:37:58 13 Well, then why did they sign the license in Japan? And,  
03:38:01 14 regardless, our technology is in their source code, and we  
03:38:04 15 will show you that.

03:38:05 16 Their second excuse is, well, even if we are  
03:38:08 17 infringing, the patents aren't any good. They're invalid.

03:38:11 18 Now, they're not getting to argue one of them is  
03:38:14 19 invalid, the '594 that we've talked about. You won't hear  
03:38:18 20 them argue that it's invalid here. But they're going to  
03:38:21 21 argue that the other four are because of the prior art.

03:38:21 22 But, again, they have a higher burden of proof.  
03:38:24 23 If the evidence is equal, they've got to do a lot more than  
03:38:26 24 just a feather. They've got to put a lot more weight on  
03:38:28 25 that scale and push it down a lot harder. And they won't

03:38:32 1 be able to do that because the Patent Office considered a  
03:38:34 2 lot of prior art.

03:38:36 3 What I'm showing you here is all the prior art  
03:38:38 4 that the Patent Office looked at. And three different  
03:38:41 5 expert examiners at the Patent Office looked at these four  
03:38:44 6 patents that Supercell says are no good, over a period of  
03:38:46 7 around three to four years each and looked at all this  
03:38:50 8 prior art and decided that they should be granted.

03:38:53 9 Now, Supercell's going to try to persuade you that  
03:38:56 10 those three examiners made four mistakes in a row. I don't  
03:38:59 11 think they're going to be able to do that, and especially I  
03:39:04 12 don't think that, because from what I expect, all they're  
03:39:06 13 going to come in here and talk about is what they did after  
03:39:09 14 the lawsuit was filed.

03:39:10 15 At that point, the lawyers hired expert witnesses  
03:39:14 16 to go out and search the Internet and try to find old games  
03:39:16 17 that they can argue did the same thing as these patents.

03:39:19 18 So I think you're going to see things like some  
03:39:21 19 old YouTube videos and even a dummies book -- you know,  
03:39:25 20 from the dummy series, but they've got a lot of other ones  
03:39:27 21 they're going to show you.

03:39:28 22 They're not going to show you -- for any of this  
03:39:31 23 prior art, they're not going to show you any source code to  
03:39:33 24 tell you how these older games really work. They're just  
03:39:36 25 going to try to get you to believe the examiner got it

03:39:39 1 wrong four times in a row. That won't be clear and  
03:39:42 2 convincing.

03:39:42 3           Their next excuse, even if they do -- even if they  
03:39:46 4 do infringe, even if the patents are invalid, they'll say  
03:39:48 5 well, you know what, we would have stopped if that had  
03:39:51 6 happened. But they never stopped. They didn't stop when  
03:39:53 7 we wrote them in 2016. They didn't stop when they agreed  
03:39:57 8 to a license in Japan. They didn't stop in the U.S., and  
03:40:00 9 they haven't stopped today.

03:40:01 10           Our patented technology is still in their source  
03:40:03 11 code, still in their products, they're still infringing.  
03:40:06 12 They may say the features don't matter, but if they didn't  
03:40:09 13 matter, why didn't they take them out? You won't hear any  
03:40:12 14 evidence that they've stopped infringing.

03:40:13 15           And then their next excuse is -- sorry -- next  
03:40:17 16 excuse is, well, even if all that doesn't work, we wouldn't  
03:40:20 17 have paid a lot because after all, we don't charge for  
03:40:23 18 these features.

03:40:24 19           And, you know, GREE hadn't made them a lot of  
03:40:27 20 money using these features in GREE's own games. But,  
03:40:30 21 again, that's -- that's an excuse and trying to distract  
03:40:32 22 you.

03:40:32 23           The question is: How valuable are they to  
03:40:35 24 Supercell? And it doesn't matter if they charge for them  
03:40:37 25 or not. What matters is do they get users to be more

03:40:42 1 engaged? Do they make users want to play a game more  
03:40:42 2 because there is a direct relationship between how much  
03:40:44 3 people play Supercell's games and how many people decide to  
03:40:48 4 spend money on Supercell's games and how much money those  
03:40:52 5 people decide.

03:40:52 6 So if our patented technology helps them get  
03:40:56 7 players more interested, more engaged and play longer, then  
03:41:00 8 that's the value to Supercell. And that's what they should  
03:41:03 9 pay a reasonable royalty.

03:41:06 10 We're asking for between .7 and 2.4 percent,  
03:41:11 11 depending on which patent you talk about, of their revenues  
03:41:14 12 for our -- for our patented features that they're using in  
03:41:17 13 their technology and in their source code.

03:41:19 14 And I think the last excuse you'll hear from them  
03:41:26 15 is, well, you know what, we're just more successful. And  
03:41:29 16 you know what, they are. They are very successful. They  
03:41:32 17 have been a very, very successful company.

03:41:33 18 THE COURT: Three minutes remaining.

03:41:34 19 MR. MOORE: Thank you, Your Honor.

03:41:35 20 They're -- they're bigger in the U.S. market than  
03:41:39 21 GREE. They make more money than GREE. And their games are  
03:41:43 22 a lot of fun. And people really, really like them. They  
03:41:46 23 have great games. Nobody disputes that.

03:41:48 24 But that's not an excuse. It's not an excuse to  
03:41:51 25 say, well, okay, maybe I took your property, but I've done

03:41:55 1 a lot better at it than you. That's not an excuse to avoid  
03:42:00 2 paying somebody for your trespass, for your infringement.

03:42:00 3 They might even try to distract you about what  
03:42:02 4 happened with GREE's U.S. business. And I'll tell you  
03:42:04 5 right now, GREE eventually closed its office in the United  
03:42:07 6 States. The competition was too much. It couldn't afford  
03:42:10 7 the investments both in the market here and the market in  
03:42:14 8 Japan.

03:42:15 9 And I'm sure they're going to try to drag all  
03:42:17 10 sorts of evidence out about that. But you know what,  
03:42:19 11 that's not an excuse. It's not an excuse that you're more  
03:42:22 12 successful in business than somebody -- than somebody if  
03:42:25 13 you're taking their property without permission.

03:42:27 14 And that's what Supercell is doing. It paid for  
03:42:30 15 that permission in Japan, but it won't do it here in the  
03:42:33 16 United States where it makes seven times as much money as  
03:42:37 17 in Japan.

03:42:37 18 Supercell needs to take responsibility for its  
03:42:40 19 actions. GREE's patented technology, you will see, is in  
03:42:44 20 Supercell's source code. GREE played by the rules, filed  
03:42:47 21 for patents, got patents. Supercell needs to play by the  
03:42:51 22 rules, too. And this trial is your chance to make them do  
03:42:56 23 that.

03:42:56 24 Ladies and gentlemen, thank you very, very much  
03:42:58 25 for your attention and your service today and all this

03:43:01 1 week. It is very important to my client, GREE, and to us  
03:43:05 2 as a team. And we cannot thank you enough for your  
03:43:08 3 service.

03:43:10 4 Thank you, Your Honor.

03:43:11 5 THE COURT: All right. That completes Plaintiff's  
03:43:13 6 opening statement.

03:43:14 7 Defendant may now present its opening statement.

03:43:19 8 Would you like a warning on your time, Mr. Dacus?

03:43:22 9 MR. DACUS: If you would let me know when I have  
03:43:24 10 five minutes, please, Judge.

03:43:26 11 THE COURT: I will. You may proceed when you're  
03:43:30 12 ready.

03:43:30 13 MR. DACUS: Thank you, Your Honor.

03:43:31 14 Good afternoon. Let me start this afternoon by  
03:43:34 15 introducing you to Jeff Ostler. Mr. Ostler is going to be  
03:43:38 16 here throughout the trial on behalf of all the men and  
03:43:41 17 women who work at Supercell.

03:43:44 18 I told you this morning that we wouldn't have you  
03:43:47 19 here if this case was not extremely important to Supercell,  
03:43:51 20 and I want to start this afternoon where I started this  
03:43:54 21 morning, and that is to say to you a very sincere thanks  
03:43:59 22 for your willingness to serve.

03:44:00 23 You may be sitting there thinking that Supercell,  
03:44:05 24 because they've been sued in a United States District Court  
03:44:09 25 on patent infringement, is mad at the patent system,

03:44:13 1 doesn't respect the U.S. patent system.

03:44:15 2           And what I want to say to you is nothing could be  
03:44:18 3 further from the truth. Supercell absolutely respects the  
03:44:23 4 United States patent system and absolutely respects the  
03:44:26 5 jury system that underlies that patent system. And  
03:44:30 6 that's -- that's why we're here.

03:44:32 7           Our patent system, however, is not perfect. You  
03:44:36 8 heard on the Court's video this morning that not all  
03:44:41 9 patents that are issued are valid. You heard on the  
03:44:44 10 Court's video this morning that when you are wrongfully  
03:44:47 11 accused of using someone else's patent, the place you can  
03:44:51 12 come and the place you should come to defend yourself is a  
03:44:56 13 United States Federal Court and present your evidence and  
03:44:59 14 facts to the jury. And that -- that's, in short, why we're  
03:45:04 15 here.

03:45:04 16           Ultimately, you're going to be asked two questions  
03:45:08 17 in this case. Does Supercell use -- and the legal term for  
03:45:14 18 that is infringe -- do we use or infringe GREE's patents?  
03:45:18 19 And are GREE's video game patents -- are they valid under  
03:45:22 20 United States patent law?

03:45:23 21           That's the two formal questions you're going to be  
03:45:25 22 asked. If you and I were talking a little more informally,  
03:45:30 23 if we went to go get a hamburger or something, and you  
03:45:34 24 said, hey, why are you here, I might say to you, we're here  
03:45:38 25 for your help. We need your help.



03:45:40 1 And the way you help us, as you know from the  
03:45:42 2 Court's instructions that he's given you and the Court's  
03:45:46 3 video, is by answering these -- these two questions.

03:45:48 4 Now, I want to pause here for a second because  
03:45:51 5 I -- I just saw these slides that GREE's lawyer put up that  
03:45:55 6 characterize these constitutionally valid defenses as  
03:45:59 7 excuses.

03:46:00 8 You know from the Court's video and you know from  
03:46:04 9 the Court's instructions to you that Supercell has every  
03:46:10 10 constitutional right to come here and defend itself. It  
03:46:15 11 doesn't have to just roll over. This is not Japan. This  
03:46:19 12 is the United States of America, and we have every right to  
03:46:25 13 come and defend ourself against charges that, frankly, just  
03:46:30 14 aren't true.

03:46:30 15 Now, there's one other thing that I want to say,  
03:46:33 16 and the Court brought this out this morning. We have that  
03:46:35 17 right. Supercell has that right, no matter the size of  
03:46:39 18 GREE.

03:46:39 19 You heard the Judge say this morning and point you  
03:46:42 20 to Lady Justice there. And one thing he said is she has a  
03:46:46 21 blindfold on. So it doesn't matter that GREE has 1700  
03:46:52 22 employees. And as you'll hear, we only have 300. We have  
03:46:56 23 an absolute right to present to you the facts and evidence  
03:46:59 24 and let you make a decision on how these questions should  
03:47:07 25 be answered.

03:47:07 1 Now, in every case -- at least every case I've  
03:47:10 2 ever been involved in, not only why you're here but how you  
03:47:15 3 get here helps you as a jury sort of sort out of the facts.

03:47:19 4 The Judge has already told you that you're going  
03:47:22 5 to have to decide the credibility of the parties here.  
03:47:25 6 You're going to hear two pretty -- two very different  
03:47:28 7 stories of the facts.

03:47:29 8 And, ultimately, as the Court has instructed you,  
03:47:34 9 you're going to have to determine -- determine the  
03:47:36 10 credibility of each party.

03:47:37 11 And so I want to tell you just a little bit about  
03:47:40 12 the history of how we make ourselves -- make our way here.

03:47:45 13 So Supercell started in 2010, very humble  
03:47:48 14 beginnings, literally started in a one-room office with  
03:47:52 15 some young programmers developing and creating game --  
03:47:57 16 games using a cardboard box as a desk.

03:48:00 17 They sat down, they thought about what they wanted  
03:48:03 18 to do, and they committed their mission to writing. How do  
03:48:07 19 they want to run their company? And I'm not going to read  
03:48:10 20 all of this, but I think a couple of them are important.

03:48:13 21 If you look at that first bullet point, it says:  
03:48:16 22 We want to build a games company that makes a positive,  
03:48:20 23 long-lasting impact on the lives of our players, our  
03:48:24 24 employees, and the community around us.

03:48:26 25 And then the second bullet point: One of the

03:48:29 1 reasons players enjoy our games for months and years is  
03:48:33 2 that we really care about their experience and treat them  
03:48:36 3 with respect.

03:48:36 4 And those are the things that Supercell tried to  
03:48:39 5 do. And over the course of now a decade, 10 years, they  
03:48:44 6 have developed and released five games. And as GREE, I  
03:48:49 7 guess I'm glad to hear them admit, these games have been  
03:48:52 8 popular. They're fun. People enjoy playing them. They  
03:48:56 9 are for the most part family games.

03:48:58 10 We talked about this morning the rating. I think  
03:49:00 11 they're rated for nine-year-olds -- all the way down to  
03:49:04 12 nine-year-olds.

03:49:05 13 Here's -- here's what Supercell is today. 320  
03:49:10 14 employees. This is a picture of -- of all of their  
03:49:12 15 employees, four offices, and five games, all built on  
03:49:21 16 exactly what they say their mission was.

03:49:23 17 Now, at this other table sits the Plaintiff, GREE.  
03:49:29 18 We've already -- you already know and you heard they're  
03:49:31 19 based in Tokyo, Japan. They had their beginnings in social  
03:49:35 20 networking, which to put a finer point on that, that  
03:49:40 21 basically means Facebook. I think many people refer to  
03:49:43 22 GREE as the Facebook of Japan. And as their lawyer told  
03:49:47 23 you, after their social network beginning, they got into  
03:49:52 24 video games.

03:49:55 25 In the process of that, they went on this

03:49:57 1 patent-writing campaign. And no doubt, you'll hear that  
03:50:01 2 they have over a thousand patents in Japan.

03:50:05 3 In about 2011, they came to the United States.  
03:50:07 4 They attempted to introduce their games to the United  
03:50:12 5 States, as their lawyer told you. But the games just were  
03:50:16 6 not successful.

03:50:17 7 By 2015, GREE had announced their likely plans to  
03:50:25 8 remove themselves from the United States market.

03:50:27 9 And then by 2017, they did remove themselves from  
03:50:32 10 the United States market. They don't develop games here  
03:50:36 11 anymore. I'm not being critical. It's just a fact that  
03:50:39 12 their games were not popular. They did not succeed in the  
03:50:42 13 U.S.

03:50:42 14 Now they're here telling you and asking you to  
03:50:48 15 award tens of millions of dollars on five patents, you know  
03:50:53 16 that. But there's a couple of facts I want you to keep in  
03:50:55 17 mind as we talk through the big picture here.

03:50:57 18 They have no game in the United States that uses  
03:51:03 19 any of these five patents. In fact, of these five patents,  
03:51:07 20 they only ever used one of those patents in a game in the  
03:51:12 21 United States, and that game was wholly unsuccessful.

03:51:15 22 For the other patents, they actually contemplated,  
03:51:17 23 and you'll see this document is in evidence in this case,  
03:51:20 24 they actually contemplated using those patents in games and  
03:51:23 25 affirmatively decided not to.

03:51:25 1           You'll have to reconcile and decide how -- how can  
03:51:29 2 they say these patents are so valuable when they themselves  
03:51:32 3 don't use them and did not use them? It doesn't make  
03:51:35 4 sense.

03:51:35 5           After GREE exited the U.S. market in 2017, they  
03:51:44 6 went on what's been described to you as a -- basically, a  
03:51:48 7 lawsuit campaign. They sued Supercell in Japan. Then they  
03:51:53 8 sued Supercell here. And that's how we make our way to a  
03:51:57 9 United States Courthouse in Marshall, Texas, on September  
03:52:01 10 10th, 2020, with you, asking you, Supercell asking you, to  
03:52:09 11 answer these two questions.

03:52:15 12           So I want to talk about these two questions that  
03:52:17 13 you're here to answer. Does GREE infringe -- does it  
03:52:20 14 use -- I mean, does Supercell use these GREE patents?

03:52:24 15           You know by now there are five patents at issue.  
03:52:27 16 You're going to hear an incredible amount of information  
03:52:30 17 about these patents, but I want to try to give you a  
03:52:33 18 roadmap as to how you go about answering these questions.  
03:52:36 19 It's not our jobs, at least we don't view it as our jobs as  
03:52:40 20 lawyers on behalf of Supercell, to tell you what the answer  
03:52:42 21 to those questions are. Our job is to present you with the  
03:52:46 22 evidence.

03:52:46 23           But I'm also confident that before you walked  
03:52:49 24 through that door this morning, you had likely never done  
03:52:53 25 an infringement analysis and looked at a patent to

03:52:56 1 determine if a product infringed.

03:52:58 2           So what I want to take a few minutes to do, if  
03:53:03 3 you'll indulge me, is to walk you through that process so  
03:53:06 4 that as you hear the evidence come in, you know how to  
03:53:08 5 apply it.

03:53:12 6           I think the -- the Court's already told you this,  
03:53:14 7 and he'll tell you again in final instructions, that a  
03:53:18 8 patent is infringed only if the product, the accused  
03:53:20 9 product, that's our three games, includes each and every  
03:53:24 10 element in the patent claim.

03:53:25 11           So what does that mean? You all have a notebook.  
03:53:31 12 I don't want you to turn to it now, but when you have free  
03:53:35 13 time and you looked at it a minute ago with Mr. Moore, at  
03:53:39 14 the back of each patent on the claims, each claim has a  
03:53:40 15 number beside it. That is allegedly a separate invention.

03:53:44 16           So what you're going to do is look at that patent  
03:53:46 17 claim and compare it to the product. And you have to see  
03:53:50 18 if it matches up exactly.

03:53:52 19           And so let me give you an example because I know  
03:53:55 20 we've been talking in a vacuum, and sometimes an example  
03:53:58 21 helps. This is an example that somebody gave me when I  
03:54:01 22 first started doing patent cases, and it helped me. If it  
03:54:05 23 helps you, I'm appreciative. If it doesn't, I apologize.

03:54:09 24           But let's assume that someone had a patent on a  
03:54:14 25 soccer ball. And let's assume that the claim in the patent

03:54:18 1 said it's made of leather, stitched together, filled with  
03:54:21 2 air, and round in shape.

03:54:22 3 And let's assume that that soccer ball patent  
03:54:25 4 owner sued the maker of a football. So what the jury would  
03:54:28 5 do in that case is the jury would say, okay, the football  
03:54:31 6 is made of leather, stitched together, filled with air, but  
03:54:35 7 the football is oblong in shape. It's not round in shape.

03:54:39 8 So one of the elements of the claim is not met.  
03:54:45 9 And it only has to be one. It only has to be one. The  
03:54:49 10 Judge will tell you that. Every word of the claim has to  
03:54:53 11 be met. And that makes sense because we all know that a  
03:54:56 12 football is very different from a soccer ball.

03:54:58 13 So how do you go about applying that in this case?  
03:55:01 14 How do you go about applying that? You're going to hear  
03:55:05 15 about every patent before this is over with. I want to  
03:55:07 16 walk you through a couple of examples, if I could, just so  
03:55:11 17 you understand the process and you have a preview of some  
03:55:15 18 of the things that you'll hear from the witness stand.

03:55:17 19 I'm going to take the '873 patent. We call it the  
03:55:25 20 aim and shoot patent. What you see on the left is Claim 8.  
03:55:28 21 When you look in the '873 patent, turn to Claim 8. These  
03:55:35 22 are the words you will see.

03:55:36 23 As GREE's lawyers told you, there are also figures  
03:55:39 24 in the patent. So this is Figure 4, and as he said, these  
03:55:43 25 figures are illustrations of examples or embodiments of

03:55:45 1 what is described in this Claim 8.

03:55:47 2           So at a very high level -- I'm not trying to be  
03:55:50 3 super technical because we have three experts who will  
03:55:53 4 testify, each with very specialized expertise in this area,  
03:55:58 5 and they'll give you more information about this than you  
03:56:01 6 want -- probably more information than I want to hear, but  
03:56:04 7 it's the kind of information that you need to make an  
03:56:07 8 informed decision.

03:56:08 9           So for Claim 8, GREE contends that our Brawl Stars  
03:56:17 10 game infringes this patent. So at a high level, what  
03:56:20 11 Claim 8 requires -- or what it -- the alleged invention is  
03:56:28 12 that when you touch the screen on your mobile device, this  
03:56:32 13 shooting effective range, what they show as a target here,  
03:56:34 14 pops up where your finger is. And then when you press for  
03:56:37 15 a second time, there's actually a firing or a shooting.  
03:56:40 16 That's -- that's at a very high level what the patent is.

03:56:44 17           What they say is that our Brawl Stars game uses  
03:56:48 18 their patent. This is a picture of the Brawl Stars game.  
03:56:52 19 You see this little cone right here. That cone is what  
03:56:59 20 they claim is the -- essentially the same as their target.

03:57:04 21           But what you'll come to know is that our game  
03:57:07 22 works very differently, and here's -- here's why.

03:57:10 23           When you press our game with your finger, this  
03:57:16 24 shooting effective range or the cone doesn't show up. You  
03:57:20 25 have to slide your finger. You have to touch and then



03:57:24 1 slide before the cone shows up. That's different than the  
03:57:27 2 patent.

03:57:27 3 In addition to that, you see -- the Court's  
03:57:31 4 already talked to you about the fact that he has  
03:57:34 5 interpreted or construed some of this language. And this  
03:57:37 6 is some of it. What you see on the right here, the Court  
03:57:44 7 has said that the shooting effective range -- I'll just  
03:57:46 8 call it the target now -- must appear in response to and  
03:57:51 9 based on the position of the first touch operation.

03:57:56 10 And so what you'll learn about the Brawl Stars  
03:57:59 11 game is this target doesn't show up based on the position  
03:58:02 12 of your finger. No matter where you touch our Brawl Star  
03:58:06 13 game with your finger, this cone shows up from a character.

03:58:11 14 You see how it's emanating from this character  
03:58:14 15 there in the middle? It doesn't matter where our finger  
03:58:18 16 is. Our finger could be at the top left, top right. It's  
03:58:21 17 not showing up based on the position of our first touch  
03:58:27 18 operation. And because of that, that element is not  
03:58:30 19 made -- it's not met.

03:58:32 20 Now, let me offer a suggestion here, and it's just  
03:58:34 21 a suggestion. It's not a requirement. You have notebooks  
03:58:38 22 with the patents in them. You have five patents-in-suit  
03:58:43 23 here. You have three different games. There's a lot of  
03:58:46 24 information. I can promise you, the lawyers, we get  
03:58:49 25 confused, even though we've been dealing this -- with this

03:58:53 1 for a long time.

03:58:54 2 My suggestion or what I offer to you is when we  
03:58:57 3 put our experts on the stand to testify related to  
03:59:01 4 non-infringement, if you want to turn in your book -- in  
03:59:06 5 your notebook to the specific claim that we're talking  
03:59:10 6 about and follow along with the expert and if you agree  
03:59:12 7 that, in fact, we do not use a particular part of the  
03:59:15 8 patent or a particular element, you can just put a little  
03:59:18 9 X.

03:59:18 10 And I offer that to you because there are so many  
03:59:20 11 to keep up with. When you go back in the jury room, you  
03:59:24 12 know -- you will know if you have an X next to the claim,  
03:59:27 13 that that part wasn't met. And it only takes one X. You  
03:59:31 14 may have two or three for each claim, I'll -- I'll tell you  
03:59:34 15 that, because for many of these patents, there -- there are  
03:59:37 16 several different ways that we don't infringe.

03:59:40 17 If you're not a note-taker, that's perfectly fine.  
03:59:43 18 You can rely on your memory. But I offer that to you as a  
03:59:47 19 possibility.

03:59:48 20 Let me talk about one more example on this  
03:59:50 21 question of do we use GREE's patents. The '655 patent, we  
03:59:55 22 call that the gift and bonus patent. This is Claim 7 from  
04:00:00 23 the '655 patent.

04:00:00 24 And, again, this is a lot of words, and it -- I'll  
04:00:07 25 be honest with you, the first time or two that you read it,

04:00:10 1 it's hard to understand. Our experts will break the words  
04:00:14 2 down into manageable segments so that it's very clear what  
04:00:17 3 these words are talking about and what our games do.

04:00:20 4 So this patent requires, as you see on the screen,  
04:00:25 5 a first user display data for selecting a first object from  
04:00:31 6 the possessed objects, possessed by the first user, and  
04:00:35 7 selecting a second user from the plurality of users. I  
04:00:39 8 mean, that's -- that's confusing the first time you read  
04:00:42 9 it.

04:00:42 10 But we'll go slow through it so that it's  
04:00:45 11 understandable. And I have to read it many times, I'll  
04:00:47 12 tell you, before I make sure I understand. And what you'll  
04:00:50 13 find out is, you see this requirement that the first user  
04:00:55 14 select a first object? Our game doesn't do that. The  
04:00:59 15 second user actually requests the object from the first.

04:01:05 16 It's -- it's just the opposite of what's required  
04:01:08 17 in the patent. Our first user does not select the first  
04:01:13 18 object. The second user actually makes that request. And  
04:01:15 19 because of that, we don't use the patent. There's no  
04:01:19 20 infringement. Again, if you're following along and you  
04:01:24 21 agree, you'd put an X.

04:01:26 22 Let me turn to the -- the second question about,  
04:01:32 23 are these patents valid?

04:01:33 24 You know from the Court's video this morning and  
04:01:37 25 from what the Court has told you in his instructions that

04:01:40 1 in order to have a valid patent, what you claim in your  
04:01:42 2 patent needs to be new. Someone before you should not have  
04:01:46 3 done it. And -- and he's going to give you specific  
04:01:49 4 instructions, but that's basically what we're trying to  
04:01:52 5 determine here. Was -- was GREE the first to do it?

04:01:55 6 So let's talk about this '873 aim and shoot  
04:02:05 7 patent. That's the same one we've been talking about.  
04:02:07 8 It's this one where you press your finger to the screen and  
04:02:09 9 a target shows up.

04:02:10 10 The evidence in this case will show you that there  
04:02:13 11 were at least two games in the United States -- a game  
04:02:16 12 called Sniper vs. Sniper and a game called Call of Mini  
04:02:24 13 Sniper, that did exactly what this '873 patent claims. And  
04:02:26 14 you may say, well, how could that be? How did they get a  
04:02:29 15 patent issued?

04:02:30 16 And you'll learn that the Patent Office did not  
04:02:33 17 look at these games. You remember the GREE lawyers showed  
04:02:36 18 you those patents a minute ago, and he said, look at all  
04:02:39 19 this prior art on here? Well, let me tell you what, you  
04:02:42 20 can look all day long and all night long, and these two  
04:02:45 21 games are not on there.

04:02:47 22 He said -- I think he was careful when he said the  
04:02:51 23 Patent Office looked at a lot of stuff. Well, that may be  
04:02:54 24 true, but that's not the question. The question is, did  
04:02:57 25 they look at the right stuff? And what you'll see and hear

04:03:02 1 is that they did not. You are the first people who will  
04:03:05 2 have this evidence in front of you to determine whether or  
04:03:09 3 not this '873 patent -- what they claimed was actually new.

04:03:13 4 This is just a timeline to -- to show you so that  
04:03:18 5 you have some perspective. What you see on the bottom  
04:03:21 6 are -- are GREE's actions. They filed this patent  
04:03:24 7 application, this '873, in February of 2013 in Japan. They  
04:03:31 8 actually filed the U.S. patent that they're here about now  
04:03:33 9 in December of 2016, and it was issued in October of 2017.

04:03:39 10 Our Brawl Stars game that they accuse of  
04:03:43 11 infringing came out in June of 2017.

04:03:45 12 So what they say is -- and we don't really need to  
04:03:50 13 fight about this -- is that they -- they get credit all the  
04:03:54 14 way back to the time that they filed this patent in Japan  
04:03:58 15 in February of 2013.

04:04:00 16 We say it doesn't matter, because even by that  
04:04:03 17 date, there were multiple games in the United States that  
04:04:06 18 had exactly what your '873 patent claims, and, therefore,  
04:04:11 19 we think the evidence will show you it's invalid.

04:04:14 20 Give you one more example on this invalidity.  
04:04:18 21 And, again, I'm -- I'm just trying to walk you through the  
04:04:20 22 process so that as you hear and see the evidence, you know  
04:04:24 23 how to apply it.

04:04:25 24 This '655 patent, we call the gift and bonus  
04:04:29 25 patent, what you see on the screen on the left is the

04:04:33 1 original version from GREE in Japanese. What you see on  
04:04:38 2 the right is the translated version, and it's an invention  
04:04:41 3 report. This is the report that someone at GREE drew to  
04:04:45 4 describe their invention at the time that they applied for  
04:04:48 5 it.

04:04:49 6 And the invention is that User A purchases or buys  
04:04:52 7 a gift. User A gives that gift to User B, and then User B  
04:05:00 8 can receive some sort of bonus item or incentive item if  
04:05:05 9 certain conditions are met.

04:05:07 10 And the expert will do a better job of explaining  
04:05:08 11 it than I do, but this incentive or bonus I kind of think  
04:05:16 12 of it where I go get my haircut, they give me a little  
04:05:19 13 card, and they punch it each time; and on the tenth time, I  
04:05:23 14 get a free haircut. So that's what this incentive is.

04:05:28 15 But the important thing here is all of this  
04:05:30 16 existed in games in the United States before they applied  
04:05:33 17 for their patent in 2013.

04:05:36 18 There was a game called FarmVille that was very  
04:05:38 19 popular on Facebook. It contained this exact type of gift  
04:05:44 20 and incentive program. FarmVille was so popular that, as  
04:05:50 21 GREE's counsel referenced, there was a book written about  
04:05:53 22 it, and this book describes exactly what their patent  
04:05:57 23 claims.

04:05:58 24 So, again, all we're trying to determine is when  
04:06:01 25 GREE filed this patent application in 2012, had anyone else

04:06:08 1 had this idea and used this idea? And the facts and the  
04:06:11 2 evidence, I think, will show you that, in fact, they had.

04:06:14 3 And, again, this FarmVille was not reviewed by the  
04:06:16 4 Patent Office. You can look at those patents and the prior  
04:06:20 5 art listed on them, and you won't find this FarmVille  
04:06:23 6 reference anywhere on there.

04:06:24 7 I hope that provides you with a -- somewhat of a  
04:06:32 8 roadmap. Again, we don't view it as our -- our job to give  
04:06:37 9 you the answers to these questions. Our job is to provide  
04:06:40 10 you with absolutely the best evidence we have to show you  
04:06:44 11 that we do not use these games and that these patents  
04:06:48 12 should have not been issued.

04:06:49 13 Before I sit down, let me spend just a few minutes  
04:06:54 14 talking about damages. That's a fancy word for the amount  
04:06:56 15 of money that they want.

04:06:59 16 It pains me to talk about it because we don't owe  
04:07:03 17 these folks a dime. If you find either that we do not use  
04:07:07 18 these patents or that these patents are invalid, then there  
04:07:11 19 are no damages.

04:07:13 20 But let me say a couple of things at a high level  
04:07:16 21 about the money that Plaintiffs like this ask for. I think  
04:07:22 22 there are two things you can learn from it.

04:07:24 23 The first thing that you can learn from it is,  
04:07:27 24 what is the case really about? I mean, they've stood up  
04:07:30 25 and given a pretty eloquent speech about what they want you

04:07:34 1 to believe this case is about. But, oftentimes, if you  
04:07:37 2 look at damages and the way they're calculated, it tells  
04:07:41 3 you what the case is really about.

04:07:43 4 The second thing is you've already heard from the  
04:07:47 5 Judge that you're going to have to determine credibility.  
04:07:49 6 You're going to hear two different stories on virtually  
04:07:52 7 every aspect of this case. And if you look at damages and  
04:07:55 8 you listen to the witnesses and what methods they employed  
04:08:01 9 to calculate the damages in this case, it can often tell  
04:08:04 10 you a lot about the credible -- the credibility of the  
04:08:09 11 parties.

04:08:09 12 Let me focus on a couple of things here at a high  
04:08:13 13 level. This second bullet point says the accused  
04:08:16 14 features -- that means the things that they say infringe  
04:08:20 15 their patents -- are not responsible for Supercell's value  
04:08:25 16 and success.

04:08:26 17 So what does that mean? GREE's admitted, and we  
04:08:29 18 certainly agree, that our games are popular. People like  
04:08:32 19 playing them. They're fun. They have great graphics,  
04:08:36 20 great, great artistry, all the things that you would want  
04:08:41 21 in a game.

04:08:41 22 THE COURT: You have five minutes remaining.

04:08:44 23 MR. DACUS: Thank you, Your Honor.

04:08:45 24 That stuff doesn't come in any respect from GREE.  
04:08:48 25 And you may be saying, well, you're Supercell's lawyer,



04:08:52 1 what else are you going to say? Of course you're going to  
04:08:58 2 say that.

04:08:58 3           You're going to see documents from GREE's own  
04:09:01 4 files written, as Mr. Moore said, long before anyone  
04:09:06 5 thought they would see the light of day where GREE is  
04:09:10 6 looking at Supercell's games with admiration, studying  
04:09:15 7 those games, and touting our features and how successful  
04:09:18 8 they are.

04:09:22 9           Think about that, I mean here we are defending  
04:09:25 10 ourselves in a court of law against these claims of  
04:09:28 11 infringement and what you're going to see are documents of  
04:09:32 12 GREE that say, boy, Supercell is doing one heck of a job,  
04:09:37 13 they've got some really, really good games out there. It  
04:09:40 14 doesn't add up.

04:09:41 15           The last thing I'm going to say is when we -- when  
04:09:45 16 we get to the point of listening to the experts on damages,  
04:09:49 17 I want you to listen closely to their experts and how  
04:09:54 18 they've calculated these -- these damages. I want you to  
04:09:57 19 listen particularly to see if they've inflated these  
04:10:00 20 numbers and whether or not what they say to you is  
04:10:02 21 credible.

04:10:02 22           I'm going to sit down now. I appreciate your time  
04:10:07 23 and attention this afternoon. We look forward over the  
04:10:10 24 next week or so to presenting the evidence to you. And  
04:10:14 25 then we look forward to having a chance to speak to you at

04:10:18 1 the end before the verdict.

04:10:19 2 Thank you, Your Honor.

04:10:20 3 THE COURT: All right. Ladies and gentlemen,  
04:10:22 4 you've now heard opening statements from both Plaintiff and  
04:10:24 5 Defendant.

04:10:26 6 Counsel, does either party wish to invoke the  
04:10:28 7 Rule?

04:10:29 8 MR. MOORE: Yes, Your Honor, we do.

04:10:31 9 THE COURT: And am I to assume that that  
04:10:34 10 application of the Rule does not include expert witnesses?

04:10:37 11 MR. MOORE: It does not, that's correct,  
04:10:39 12 Your Honor.

04:10:39 13 MR. DACUS: That's correct.

04:10:40 14 THE COURT: All right. Then the Rule has been  
04:10:41 15 invoked.

04:10:42 16 Unless you are a party representative or an expert  
04:10:45 17 witness, if you are a fact witness anticipating that you  
04:10:50 18 will testify in this case, then under the Rule, you're  
04:10:54 19 required to remain outside the courtroom until you are  
04:10:56 20 actually called to testify.

04:10:58 21 And, counsel, I remind both sides to help me  
04:11:05 22 enforce that.

04:11:06 23 MR. DACUS: We will, Your Honor.

04:11:06 24 THE COURT: Ladies and gentlemen of the jury,  
04:11:08 25 we're going to take a brief recess, and then we're going to

04:11:11 1 come back and the Plaintiff will call their first witness  
04:11:15 2 and begin their case-in-chief.

04:11:17 3 I failed to tell you, let me tell you real quickly  
04:11:21 4 with regard to those juror notebooks, they need to be in  
04:11:23 5 your possession at all times. And you need to have them  
04:11:27 6 with you, or at the end of the day when you leave for the  
04:11:31 7 evening, you need to leave them on the table in the jury  
04:11:33 8 room.

04:11:33 9 Now, there will be times, and this is one of them,  
04:11:37 10 when we're going to be out of the courtroom for a  
04:11:39 11 relatively very short period of time, and in those cases, I  
04:11:43 12 may say you can simply leave your notebooks closed in your  
04:11:45 13 chairs, and that way you won't have to carry them back and  
04:11:47 14 forth to the jury room when we're not going to be out of  
04:11:50 15 the courtroom for very long.

04:11:51 16 But, otherwise, unless I give you specific  
04:11:53 17 instructions like that, you should either have them in your  
04:11:56 18 possession, or they should be in the jury room as you leave  
04:12:01 19 for each evening.

04:12:02 20 Follow all the instructions that I've given you,  
04:12:04 21 including, of course, not to discuss the case among each  
04:12:08 22 other or with anyone else, and then we'll be back shortly  
04:12:12 23 to continue with Plaintiff's first witness.

04:12:14 24 The ladies and gentlemen of the jury are excused  
04:12:17 25 for recess at this time.

04:12:17 1 COURT SECURITY OFFICER: All rise.

04:12:18 2 (Jury out.)

04:12:19 3 THE COURT: The Court stands in recess.

04:13:00 4 (Recess.)

04:26:05 5 (Jury out.)

04:29:17 6 COURT SECURITY OFFICER: All rise.

04:29:20 7 THE COURT: Be seated, please.

04:29:23 8 Mr. Moore, is Plaintiff prepared to call its first

04:29:33 9 witness?

04:29:33 10 MR. MOORE: Yes, Your Honor, we will -- we are.

04:29:36 11 THE COURT: All right. Let's bring in the jury,

04:29:38 12 please.

04:29:38 13 COURT SECURITY OFFICER: All rise.

04:29:40 14 (Jury in.)

04:30:08 15 THE COURT: Please be seated.

04:30:41 16 Plaintiff, call your first witness.

04:30:47 17 MR. MOORE: Thank you, Your Honor. As its first

04:30:49 18 witness, the Plaintiff would like to call Professor Robert

04:30:56 19 Akl.

04:30:56 20 THE COURT: All right. Professor Akl, if you'll

04:31:10 21 come forward and be sworn by our courtroom deputy.

04:31:15 22 (Witness sworn.)

04:31:15 23 THE COURT: Please come around, sir, and have a

04:31:17 24 seat at the witness stand.

04:31:30 25 Mr. Moore, you may proceed with direct examination

04:31:34 1 when you're ready.

04:31:35 2 MR. MOORE: Thank you, Your Honor.

04:31:35 3 ROBERT AKL, PH.D., PLAINTIFF'S WITNESS, SWORN

04:31:35 4 DIRECT EXAMINATION

04:31:36 5 BY MR. MOORE:

04:31:36 6 Q. Good afternoon, Dr. Akl.

04:31:51 7 A. Good afternoon.

04:31:52 8 Q. Would you please introduce yourself to the jury?

04:31:55 9 A. I am Dr. Robert Akl. I am a professor of the

04:32:00 10 University of North Texas in the computer science and

04:32:02 11 engineering department.

04:32:03 12 Q. And why are you here to testify at this case, Dr. Akl?

04:32:08 13 A. So I'm here to give my professional opinion as to

04:32:12 14 whether Supercell infringes GREE's patents. I'm also here

04:32:19 15 to give my professional opinion as to whether GREE's

04:32:22 16 patents are valid or not.

04:32:24 17 Q. And what is the subject of your testimony today?

04:32:28 18 A. Today, we're going to talk about infringement, today

04:32:32 19 and tomorrow.

04:32:33 20 Q. All right. And have you prepared anything that will

04:32:36 21 help you illustrate your testimony today?

04:32:37 22 A. Yes. I've prepared slides and videos.

04:32:41 23 Q. All right. First, I'd like to cover some of your

04:32:46 24 background for the jury. And I'll go ahead and use the

04:32:51 25 slides to -- to help you walk through that.

04:32:53 1 Could you please describe your educational  
04:32:55 2 background, Dr. Akl?

04:32:56 3 A. Yes. I have a Bachelor of Science in computer science,  
04:33:01 4 a Bachelor of Science in electrical engineering, a Master  
04:33:08 5 of Science in electrical engineering and a Doctor of  
04:33:09 6 Science in electrical engineering, all from Washington  
04:33:13 7 University in St. Louis.

04:33:14 8 Q. All right. And what is your professional background?

04:33:18 9 A. So I've been a professor at UNT for the last 18 years.

04:33:24 10 Before that, I worked in academia and also in industry.

04:33:29 11 And over the last 18 years at UNT, I have taught hundreds

04:33:34 12 of courses. I have also advised undergraduate and graduate

04:33:38 13 students. And I'm currently the associate chair of

04:33:42 14 graduate studies in the department. So I am in charge of

04:33:47 15 the Master's and the Ph.D. program in our department.

04:33:49 16 Q. Could you give us some examples of your professional  
04:33:52 17 accomplishments, please?

04:33:54 18 A. So as a professor, I teach. I also do a lot of

04:33:58 19 research. I have Master's and Ph.D. students and

04:34:03 20 undergraduate students that sometimes do a thesis and a

04:34:07 21 dissertation.

04:34:08 22 And over the years I have published extensively,

04:34:10 23 have journal publications, conference publications, book

04:34:14 24 chapters. I've also written and received research funding

04:34:18 25 and educational funding.

04:34:21 1 I've designed and developed undergraduate and  
04:34:24 2 graduate courses.

04:34:25 3 And I've received several awards, and I'm  
04:34:30 4 highlighting just three here that mean a lot to me.

04:34:33 5 One is the UNT College of Engineering Outstanding  
04:34:38 6 Teacher Award, the IEEE Professionalism award from the Fort  
04:34:45 7 Worth Chapter, and the Tech Titan of the Future award.

04:34:48 8 The IEEE Professionalism award and the Tech Titan  
04:34:53 9 of the Future award I received for my work for the summer  
04:34:57 10 camps that I have for high school kids. And I'll talk a  
04:34:59 11 little bit about that on the next slide.

04:35:01 12 Q. Okay. What experience do you have that's relevant to  
04:35:04 13 the technology in this case?

04:35:08 14 A. So what I bring to this case are my years of experience  
04:35:13 15 designing and teaching courses on wireless communications,  
04:35:17 16 mobile devices, video game design and development. I've  
04:35:21 17 also myself designed networking systems and video games. I  
04:35:27 18 love playing video games. I've been playing video games my  
04:35:31 19 whole life.

04:35:32 20 I've also taught and graduated students that have  
04:35:37 21 gone off and done very well in telecommunication companies  
04:35:41 22 and video game companies.

04:35:43 23 A few of my students actually designed and worked  
04:35:47 24 on the Call of Duty game franchise that's very successful.

04:35:52 25 I've received over \$1 million in research and

04:35:56 1 educational grants from the State of Texas, the Texas  
04:36:01 2 Higher Education Coordinating Board, the National Science  
04:36:05 3 Foundation, and industry.

04:36:06 4           And probably what I'm most proud of is I've also  
04:36:10 5 received over a million dollars in scholarships for  
04:36:15 6 robotics and video game programming summer camps that I've  
04:36:20 7 been holding since 2005. So we've been doing them for --  
04:36:29 8 forever.

04:36:29 9           But the point of these camps are to get women, and  
04:36:37 10 especially high school and middle school young girls and  
04:36:41 11 minorities interested in computer science.

04:36:44 12           What the research shows is we lose them around the  
04:36:48 13 8th grade or the 9th grade. When you look at our  
04:36:51 14 population, 51 percent are women, and only around 20  
04:36:56 15 percent go into computer science or go into science in  
04:36:58 16 general. And so I wanted to look at why and how we can  
04:37:02 17 change that.

04:37:04 18           So the -- the research shows we lose them around  
04:37:06 19 the 8th and 9th grade. And this is when people start  
04:37:09 20 telling them you shouldn't go into science or maybe you  
04:37:11 21 should go into something else.

04:37:13 22           So I started my summer camps. We did first two  
04:37:18 23 camps in 2005. And we got the money so that the camps are  
04:37:22 24 free. We got scholarships. And we would have 20 students  
04:37:25 25 per camp. They would come to UNT for a week. And we would



04:37:28 1 teach them computer science.

04:37:30 2 Now, how do you teach computer science to somebody  
04:37:33 3 in the 8th grade and 9th grade and make it engaging? We  
04:37:36 4 use gaming as a backdrop.

04:37:39 5 So I designed the curriculum of using robotics and  
04:37:44 6 video games to get the -- the girls on board and get them  
04:37:47 7 excited about computer science, to engage, to design the  
04:37:51 8 games, to play the games, and hopefully to come back and  
04:37:55 9 become computer scientists themselves.

04:37:58 10 And because we've been doing the camps for so  
04:38:00 11 long, we have such good data. And a lot of those young  
04:38:04 12 kids that came have since joined UNT and joined other  
04:38:08 13 schools and joined STEM fields. STEM means science,  
04:38:13 14 technology, engineering, or math.

04:38:14 15 So -- and for my summer camps, I won the other two  
04:38:20 16 previous awards from the IEEE professionalism. They saw  
04:38:24 17 what I did, and they got -- they gave me that award from  
04:38:26 18 the Fort Worth chapter, and the Tech Titan of the Future  
04:38:29 19 from the Dallas Metroplex.

04:38:31 20 So this was one of the things I was able to do at  
04:38:34 21 UNT outside of teaching our undergraduate and graduate  
04:38:38 22 students that I'm very proud of.

04:38:40 23 Q. What type of games do you work on with the kids at the  
04:38:44 24 camps?

04:38:44 25 A. They design racing games. They design role playing

04:38:46 1 games. They design shooters. We worked with Microsoft,  
04:38:50 2 who donated Xboxes. So they were designing on the Xbox  
04:38:54 3 platform.

04:38:55 4 We worked with Google, who donated Android  
04:39:00 5 tablets, and they designed Android apps. And the games are  
04:39:06 6 multiplayer. The games allow them to engage each other.  
04:39:10 7 They work on teams together when they design the games.  
04:39:14 8 And they spend a really good week.

04:39:16 9 And some of those students wanted to come back,  
04:39:19 10 and the -- the next summer, and so I went from designing  
04:39:23 11 robotics games, app programming games, video games, so even  
04:39:27 12 the same students can come back year after year and learn  
04:39:31 13 something new.

04:39:31 14 THE COURT: Let me interrupt. The question was:  
04:39:34 15 What type of games do you work on? And we heard about  
04:39:38 16 donations from Microsoft and what happened the next year  
04:39:41 17 when they wanted to come back.

04:39:43 18 This is all interesting information, Dr. Akl, but  
04:39:46 19 you're going to have to limit your answers to the questions  
04:39:49 20 asked. And then Mr. Or -- Moore will ask follow-up  
04:39:54 21 questions about these other things. A long narrative  
04:39:58 22 speech is not the way witnesses are examined in court. So  
04:40:02 23 we need to do this in discrete questions, and let's proceed  
04:40:05 24 on that basis.

04:40:08 25 MR. MOORE: Thank you, Your Honor.

04:40:09 1 THE WITNESS: Yes, Your Honor.

04:40:09 2 Q. (By Mr. Moore) Which Supercell games did you analyze  
04:40:10 3 for this case, Dr. Akl?

04:40:12 4 A. So if we go to the next slide. Thank you.

04:40:14 5 So I analyzed the three games in question, Clash  
04:40:18 6 of Clans, Clash Royale, and Brawl Stars.

04:40:21 7 Q. All right. And what opinions have you reached from  
04:40:24 8 your analysis?

04:40:25 9 A. So my opinions are that Supercell directly infringes  
04:40:31 10 Claim 2 of the '594 template patent through Clash of Clans.

04:40:38 11 And then with Clash Royale, there is infringement  
04:40:41 12 on three patents, the '137, the battle patent for Claims 1,  
04:40:46 13 2, and 15; for the '481, which is also the battle patent,  
04:40:52 14 the two patents are similar, Claims 4 and 5; and for the  
04:40:57 15 '655, which is the donation patent, Claims 5 and 7.

04:41:01 16 Q. All right. And then what about the third game, Brawl  
04:41:04 17 Stars?

04:41:04 18 A. Brawl Stars? It's my opinion that Supercell directly  
04:41:10 19 infringes Claims 8 and 10 of the '873, the shooting patent  
04:41:16 20 through Brawl Stars.

04:41:17 21 Q. In addition to direct infringement, did you look at any  
04:41:20 22 other types of infringement --

04:41:21 23 A. Yes.

04:41:21 24 Q. -- Supercell? What else did you look at?

04:41:25 25 A. It's also my opinion that Supercell indirectly

04:41:28 1 infringes those claims by encouraging and instructing and  
04:41:31 2 teaching others to directly infringe.

04:41:35 3 Q. All right. Now, we've -- we've heard a lot about this  
04:41:40 4 over the course of the day, Dr. Akl. But just to -- to  
04:41:42 5 understand your analysis, can you explain what a patent  
04:41:44 6 claim is and how that factored into the work you did,  
04:41:48 7 please?

04:41:48 8 A. Yes. So claims are the numbered sentences at the end  
04:41:55 9 of the patents. And here, for example, Claim 1 is an  
04:41:59 10 independent claim. Claim 2 is a dependent claim because it  
04:42:02 11 depends on Claim 1.

04:42:06 12 And so, when I do my analysis on Claim 2, even if  
04:42:09 13 Claim 1 is not asserted, I have to look at all the  
04:42:12 14 limitations of Claim 1 in addition to the limitations of  
04:42:15 15 Claim 2.

04:42:16 16 Q. Okay. Now, are you being compensated for the time you  
04:42:21 17 spent on this case?

04:42:21 18 A. Yes, I am being paid for my time.

04:42:24 19 Q. And do you get anything extra if GREE were to prevail  
04:42:27 20 in the case?

04:42:28 21 A. No, I have no financial interest in the case.

04:42:30 22 Q. Are you an employee or have you ever worked for GREE?

04:42:33 23 A. No.

04:42:34 24 Q. All right. Have you ever testified as an expert  
04:42:36 25 witness before?

04:42:37 1 A. Yes, I've testified many times before, including in  
04:42:42 2 Marshall a few times before.

04:42:44 3 Q. And in those earlier cases, for which side of the case  
04:42:47 4 did you work on?

04:42:48 5 A. In some cases, I've worked for Plaintiffs. In some  
04:42:51 6 cases, I've worked for Defendants. It's about 50/50  
04:42:54 7 percent.

04:42:57 8 Q. All right.

04:42:57 9 MR. MOORE: Your Honor, at this time, the  
04:42:58 10 Plaintiff would tender Dr. Robert Akl as an expert witness  
04:43:02 11 in the field of computer science, video game systems, and  
04:43:05 12 computer programming.

04:43:06 13 THE COURT: Is there objection?

04:43:07 14 MR. SACKSTEDER: No objection, Your Honor.

04:43:08 15 THE COURT: Then, without objection, the Court  
04:43:09 16 will recognize this witness as an expert in those  
04:43:12 17 designated fields.

04:43:13 18 MR. MOORE: Thank you, Your Honor.

04:43:14 19 THE COURT: Please proceed.

04:43:14 20 MR. MOORE: Thank you.

04:43:15 21 Q. (By Mr. Moore) Dr. Akl, what materials did you  
04:43:18 22 consider as part of your analysis of Supercell's  
04:43:25 23 infringement?

04:43:25 24 A. So I looked at a lot of things. First of all, the GREE  
04:43:30 25 patents themselves, the file histories for the GREE

04:43:35 1 patents. I looked at -- at a lot of source code for the  
04:43:39 2 games. I looked at prior art. I looked at the Court's  
04:43:44 3 claim construction, which I used and I adopted. I looked  
04:43:48 4 at the games themselves. I played the games and took  
04:43:52 5 videos of me playing the games, and I looked at the source  
04:43:55 6 code for the games.

04:43:57 7 I've looked at testimony of Supercell's employees,  
04:44:00 8 the documents that were produced in this case, the expert  
04:44:04 9 reports that were submitted by Supercell's experts. There  
04:44:09 10 were three experts, Dr. Claypool, Dr. Zagal, and  
04:44:12 11 Mr. Friedman.

04:44:13 12 And I looked at publicly available information  
04:44:16 13 like Supercell's websites and YouTube channels where they  
04:44:20 14 posted videos.

04:44:21 15 Q. All right. What is source code?

04:44:23 16 A. So source code is what a programmer would type on a  
04:44:29 17 computer. It's the instructions and the language for how  
04:44:34 18 the game, for example, is going to run.

04:44:36 19 It's a language like any other language. And it's  
04:44:41 20 readable by humans. It looks a little cryptic, but we can  
04:44:46 21 read it.

04:44:46 22 Q. What are you illustrating about source code on this  
04:44:48 23 slide, Dr. Akl?

04:44:49 24 A. So what I'm showing here is a -- we start with the  
04:44:53 25 source code. We type -- this is the instructions. That

04:44:57 1 gets converted to what we call executable code.

04:45:01 2           So these are the 0s and the 1s that then the  
04:45:05 3 machine -- the computer can read and understand. We can't  
04:45:08 4 read them, but that's what makes the code run quickly. And  
04:45:11 5 that's -- and that's what I'm showing in the second column.

04:45:13 6 Q. Thank you.

04:45:14 7           Why do you have two different -- the blue arrows  
04:45:17 8 and the, I guess, orange arrows, why do you have those two  
04:45:21 9 different paths there?

04:45:22 10 A. So in this case, we have code and -- Supercell's source  
04:45:27 11 code that both runs on Supercell's servers, and they also  
04:45:31 12 run on the phones.

04:45:32 13           So the games themselves, the three games that we  
04:45:35 14 talked about, like Clash of Clans, you have an app that you  
04:45:39 15 can download on your phone from Google or from Apple, but  
04:45:44 16 you also have very similar source code that runs on  
04:45:47 17 Supercell's servers that maintains the game as you play it.

04:45:51 18 Q. And how do the source code on the servers interact with  
04:45:54 19 the source code on the games?

04:45:55 20 A. So the games -- you can't play the game if you're not  
04:46:01 21 connected to Supercell's server, if you don't have an  
04:46:03 22 Internet connection.

04:46:04 23           So when you launch the game, the game will connect  
04:46:07 24 to Supercell's server. And the server will run the game  
04:46:11 25 also. And the Supercell server will look at what you're

04:46:17 1 doing in terms of any movement the player does. It will  
04:46:21 2 look at that information, make sure they're doing something  
04:46:25 3 valid, and it will relay it to the other phones that you're  
04:46:27 4 playing with.

04:46:28 5 So whatever is happening, the definitive condition  
04:46:31 6 is on the Supercell server.

04:46:34 7 Q. All right. And what does the code -- the source code  
04:46:38 8 on the app that's on the user's device do?

04:46:40 9 A. So the -- the games on the user's devices provide the  
04:46:44 10 interface for users to provide input and to play the game  
04:46:48 11 against others.

04:46:49 12 Q. All right. And what specific source code did you  
04:46:53 13 review in this case?

04:46:54 14 A. So I reviewed the source code for Clash of Clans. I  
04:47:00 15 reviewed the source code for Clash Royale, and I reviewed  
04:47:05 16 the source code for Brawl Stars. And I reviewed the -- the  
04:47:09 17 source code for the games that run on the phones. I  
04:47:13 18 reviewed them on Android and on iOS, and there's really not  
04:47:16 19 much of a difference in terms of the two platforms.

04:47:21 20 Q. Okay.

04:47:22 21 A. And I also looked at the communication -- the source  
04:47:25 22 code between the games and the servers.

04:47:26 23 Q. All right. And what are you trying to illustrate with  
04:47:28 24 this slide where you're showing the servers in the middle  
04:47:30 25 and then two different phones on each side for each of the



04:47:33 1 three games?

04:47:33 2 A. So all the games are multiplayer, but you cannot play  
04:47:39 3 them unless you're connected to the server. So even though  
04:47:42 4 two people can have the same game even if you're playing  
04:47:45 5 with somebody across the street from you, your phone has to  
04:47:48 6 be connected through the Internet and to Supercell's  
04:47:54 7 servers. So the users can only communicate through the  
04:47:59 8 server, and the server will take information and give  
04:48:01 9 information from each phone to the other phone --

04:48:02 10 Q. Okay.

04:48:03 11 A. -- in terms of the gameplay and reflect what one person  
04:48:07 12 is doing on another person's phone.

04:48:10 13 Q. So will the games show both what the player who is  
04:48:13 14 using the phone is doing as well as the other players -- or  
04:48:19 15 player or players against whom they are playing?

04:48:20 16 A. Yes.

04:48:20 17 Q. Now, what about on the servers, what were your -- what  
04:48:25 18 was your analysis involving the Supercell servers and the  
04:48:27 19 code there?

04:48:27 20 A. So the servers keep a copy of any progress you do on  
04:48:31 21 the game. So, for example, if you break your phone and you  
04:48:34 22 get a new phone and you download the game again, the game  
04:48:39 23 will connect to the server if you sign in with the same ID.

04:48:43 24 It will know that you've played this game before,  
04:48:45 25 and it will download all the updates and all the unlocks

04:48:49 1 that you've done, all the progress. So you don't have to  
04:48:53 2 start from scratch. So anything that you do on your phone  
04:48:56 3 is reflected and stored and maintained on the server and  
04:48:58 4 can be downloaded at any time.

04:49:00 5 Q. And why is that true?

04:49:03 6 A. Because these games are server centric, which means you  
04:49:10 7 cannot play them unless you're connected to the Internet  
04:49:13 8 and the servers manage what the users do. The servers, for  
04:49:18 9 example, for Brawl Stars will make sure that you are alive,  
04:49:20 10 the player, and can shoot before it allows you to shoot.  
04:49:24 11 So a lot of the determination of what happens in the game  
04:49:26 12 is determined by the server.

04:49:27 13 Q. And did you review any other materials or testimony  
04:49:32 14 relating to how the servers operated in this -- the  
04:49:35 15 Supercell servers operate?

04:49:36 16 A. Yes, I reviewed testimony from Supercell employees.

04:49:43 17 Q. Okay. Now, could you describe a little bit how you  
04:49:46 18 went about the source code review process in this case?

04:49:49 19 A. Yes. So when we get source code, we get millions of  
04:49:55 20 lines of code, and you're literally looking for a needle in  
04:49:58 21 a haystack. And so it takes a lot of time to look at the  
04:50:01 22 source code.

04:50:01 23 And so I have some assistance in the source code,  
04:50:08 24 and the assistance that I received are from Dr. John Strawn  
04:50:13 25 and Robert Tidwell that went and sat in front of the source

04:50:21 1 code and spent days and days and days on the machine under  
04:50:24 2 my direction and tell me what they see, and I tell them to  
04:50:28 3 print the files that are important.

04:50:29 4 And then I get those files and I analyze the  
04:50:32 5 source code in hard copy.

04:50:33 6 Q. And how did you interact with Dr. Strawn and  
04:50:37 7 Mr. Tidwell so that you were sure that they were looking  
04:50:39 8 for the most relevant code to your analysis?

04:50:41 9 A. So we have regular calls and conference calls.

04:50:44 10 First, I tell them what I'm looking for, so I  
04:50:47 11 explain the patents. I explain what I -- what I would need  
04:50:54 12 them to find in the source code. And then they -- we have  
04:50:56 13 calls. They tell me they found this or that. And I say,  
04:51:00 14 okay, yes, this looks good, go ahead and print it. And  
04:51:03 15 then I get it, and I look at those files.

04:51:06 16 And I have a stack -- a huge stack of files that  
04:51:09 17 they've printed, and then I tell them, yes, this is  
04:51:10 18 helpful. No, I need you to go print something else. And  
04:51:13 19 so, they work under my direction for me to be able to do  
04:51:16 20 the source code I reviewed.

04:51:17 21 Q. And is the Supercell source code confidential?

04:51:19 22 A. Yes. We all signed what's called a protective order  
04:51:24 23 where only a few number of people can look at the source  
04:51:27 24 code, and -- and it's protected. You cannot just print  
04:51:32 25 anything, you cannot, you know, take the source code.

04:51:35 1 When they go in and look at it, they can't take  
04:51:37 2 their phones with them. They can only -- they can't take  
04:51:41 3 electronics and so on. So the source code is protected on  
04:51:44 4 a specific laptop when it's provided by Supercell.

04:51:48 5 Q. And does that have any -- excuse me. Does that have  
04:51:51 6 anything to do with why you looked at source code printouts  
04:51:53 7 on paper?

04:51:54 8 A. Yes. So this way I have the hard copies and I can  
04:52:00 9 spend as much time with the hard copies, I can spend days  
04:52:03 10 or weeks, and I can go back, and it makes it -- makes my  
04:52:06 11 life easier having the hard copy with me as I'm writing my  
04:52:10 12 report to look at the source code.

04:52:11 13 Q. Were -- in this case, were you allowed to keep source  
04:52:15 14 code electronically at your own office under the protective  
04:52:15 15 order?

04:52:20 16 A. I'm not allowed to keep it electronically, but I am  
04:52:23 17 allowed to keep a hard copy under lock and key.

04:52:25 18 Q. Okay. I'd like to ask you about GREE's patents. Just  
04:52:30 19 before I get to each specific patent, can you introduce the  
04:52:32 20 patents that you're here to talk about at a very high  
04:52:37 21 level, please?

04:52:37 22 A. Yes. There are five patents in this case. The '594,  
04:52:44 23 which is the template patent. The '137 and the '481 have  
04:52:47 24 very similar specification. Those are the -- kind of like  
04:52:52 25 the beef of the patent, what's in the middle, and figures.

04:52:56 1 They have different claims, but we're going to walk through  
04:52:58 2 them together. They're the battle patents. The '655 is  
04:53:01 3 the donation patent. And the '873 is what I'm going to  
04:53:04 4 refer to as the shooting patent.

04:53:06 5 Q. What do these patents have in common with each other?

04:53:09 6 A. So all these patents relate to improvements to video  
04:53:15 7 games. They all make the games more engaging and more fun.  
04:53:20 8 They provide features that make the game more enjoyable,  
04:53:23 9 and it allows the users to do less grinding.

04:53:26 10 Q. So what is grinding?

04:53:28 11 A. Grinding is the act of doing something that is boring  
04:53:33 12 and repetitive in a video game. For example, if you want  
04:53:36 13 to just level or you just want to move something, if you  
04:53:39 14 have to move every single building individually, it's a  
04:53:42 15 repetitive boring task. That's what's called grinding. So  
04:53:46 16 anything that gets rid of grinding is good.

04:53:49 17 Q. And what do game developers want to do with respect to  
04:53:53 18 grinding in their games?

04:53:55 19 A. So, normally, what they want to do is you can progress,  
04:53:59 20 for example, with grinding, you can unlock things, you can  
04:54:03 21 pay money that can help you level so you do less grinding,  
04:54:06 22 or you introduce features that gets rid of grinding.

04:54:10 23 For example, the ability to copy an entire  
04:54:13 24 template would be something that's good, so you don't have  
04:54:16 25 to copy an individual building if you have 30, 40 buildings

04:54:20 1 as you start advancing really a lot in a game.

04:54:23 2 Q. And is this concept of grinding something that you deal  
04:54:25 3 with in your work, as well, and, for example, in the camps  
04:54:29 4 that you've described to the jury?

04:54:30 5 A. Yes. So when I held my summer camps, I wanted to make  
04:54:34 6 sure that my -- my students enjoyed the games they're  
04:54:39 7 designing, and they're not grinding as they're -- as a way  
04:54:42 8 of programming.

04:54:43 9 So anything that you do to remove grinding from  
04:54:47 10 the life of the student or the life of the person playing  
04:54:49 11 the game makes it more engaging, and then they spend more  
04:54:52 12 time playing it, and that's a good thing.

04:54:53 13 Q. Let's discuss the patents one-by-one, starting with the  
04:54:59 14 '594.

04:54:59 15 Could you please summarize at a high level what  
04:55:03 16 the invention of the '594 patent is?

04:55:04 17 A. Yes. So -- so this patent is about improvements to a  
04:55:09 18 user interface, and I'm showing on this slide just the  
04:55:13 19 number of the patent, the title of the patent, and three  
04:55:16 20 figures from the patent. And it's improvements to the user  
04:55:21 21 interface that makes it easier and faster to move game  
04:55:28 22 content by using templates.

04:55:29 23 Q. Okay. What does the patent talk about in terms of what  
04:55:33 24 happened before?

04:55:34 25 A. So when you look at those patents, usually the first

04:55:40 1 section after the abstract is the background of the patent,  
04:55:43 2 and this is where the patentee would describe the  
04:55:47 3 background.

04:55:47 4 So what I'm showing on this slide is the  
04:55:50 5 background from the '594 patent, and the patent itself  
04:55:57 6 identifies the issues or the problems that were in the --  
04:56:00 7 before the patent was invented.

04:56:02 8 Q. All right. And what specifically does the '594 patent  
04:56:05 9 discuss in terms of what existed before?

04:56:08 10 A. So the patent itself cites Clash of Clans. It cites to  
04:56:14 11 an early version of the game in question today where that  
04:56:18 12 early version did not have the features that infringed.

04:56:22 13 So the inventors of the patent saw the game and  
04:56:26 14 said, okay, this is an example of the game that can benefit  
04:56:30 15 from what we are going to invent in this patent in terms of  
04:56:33 16 the ability to copy and save templates.

04:56:39 17 So they cite to Clash of Clans and they cite to  
04:56:43 18 SimCity, two games that have a lot of buildings that you  
04:56:46 19 place around.

04:56:47 20 Q. And how does the '594 patent describe the problems with  
04:56:49 21 those earlier games?

04:56:51 22 A. So the -- the patent itself -- now I'm citing sections  
04:56:56 23 of the patents, and so the citations are below what I'm  
04:56:59 24 showing.

04:57:00 25 So, for example, in Column 1, Lines 50 to 60, is

04:57:04 1 where I'm taking this quote. And it describes that when  
04:57:09 2 you're trying to develop cities, players would find it very  
04:57:14 3 complicated sometimes to change the position of all these  
04:57:17 4 buildings and types and so on, and so it would be -- so it  
04:57:23 5 would make the game progress in a monotonous way. And if  
04:57:28 6 we could provide a way to improve that, it would make it  
04:57:34 7 less monotonous.

04:57:36 8 Q. Is that related in any way to grinding?

04:57:38 9 A. Yes, that's kind of like what grinding is.

04:57:40 10 Q. And then how does the patent describe the invention  
04:57:42 11 that would solve that problem?

04:57:43 12 A. So the -- the patent itself says, well, if I -- this is  
04:57:47 13 now from Column 4, Lines 26 to 37. The patent itself says  
04:57:53 14 that if a player now can create a template and they can  
04:57:56 15 stipulate where those facilities are, where the buildings  
04:58:00 16 are, what are their types, what are their positions, then  
04:58:05 17 it will make it much easier for them to move them around  
04:58:08 18 and to place them, and it will make the game more engaging  
04:58:11 19 and more fun.

04:58:12 20 Q. And does the patent also describe copying a template  
04:58:15 21 from a different user?

04:58:17 22 A. Yes, and we are going to look at that in -- in --  
04:58:22 23 later.

04:58:22 24 Q. What is the benefit to a player of being able to copy a  
04:58:25 25 different player's template?



04:58:27 1 A. So if you have players that are your friends, they can  
04:58:30 2 help you, if they're doing well.

04:58:33 3           Instead of you going and trying -- them telling  
04:58:35 4 you what to do or how to place them if you can go to see  
04:58:39 5 their village and just hit a button, copy that village, and  
04:58:44 6 then be able to copy it to your own game space, then it  
04:58:50 7 makes the game more fun because they can see what someone  
04:58:53 8 else has done, and you don't have to do the individual  
04:58:56 9 placement yourself. You start out with a copy of someone  
04:59:00 10 else's village, and then you can edit it if you want.

04:59:05 11 Q. All right. Let's go on to the next two patents.

04:59:07 12           Let's talk about the '137 and '481 battle patents.

04:59:13 13           Again, at a high level, how would you summarize  
04:59:16 14 the inventions of these patents, Dr. Akl?

04:59:18 15 A. So these patents describe an entire type of game, and  
04:59:22 16 specifically they describe a battle between two or more  
04:59:26 17 players.

04:59:27 18 Q. All right. How does -- how do the patents, I should  
04:59:34 19 say, describe that battle game?

04:59:36 20 A. So this is taken from the patent's abstract. This is  
04:59:40 21 the thing on the cover of the patent, and the -- the patent  
04:59:42 22 itself says, you know, in a battle event, you can have a  
04:59:47 23 lot of cards that are aligned, for example, down here in a  
04:59:54 24 first field. This is what it's saying the first field.

04:59:58 25           And this is a figure from the patent, Figure 7.

05:00:01 1 It's showing you how the user can, for example, select game  
05:00:06 2 content and then can place it, for example, here and the  
05:00:10 3 different players, your player and the enemy player, can  
05:00:15 4 battle each other in the game.

05:00:17 5 Q. So what happens when the player selects the card, what  
05:00:21 6 happens to that, according to the description of the  
05:00:23 7 patent?

05:00:24 8 A. So in this game, you can deploy it, and then -- and  
05:00:30 9 then it becomes a -- a character and it can attack an enemy  
05:00:36 10 character and do battle with an enemy character.

05:00:39 11 Q. What is the CA that's referred to up at the top of  
05:00:42 12 Figure 7?

05:00:42 13 A. So this is like a character, like your own character  
05:00:46 14 that's battling an enemy, so a C is your own character, E  
05:00:49 15 is the enemy, for example.

05:00:50 16 Q. And what's the relationship between the cards down at  
05:00:52 17 the bottom of the figure and then the characters at the top  
05:00:55 18 of the figure?

05:00:55 19 A. So you can -- you can take a card, you can move it, and  
05:01:00 20 you can deploy it, and it becomes a player character that  
05:01:03 21 then can do battle on its own. And it becomes engaging so  
05:01:06 22 you don't, for example, have to keep hitting attack,  
05:01:11 23 attack, and so. This is all in the patents.

05:01:12 24 Q. And how does the patent discuss the cards that you have  
05:01:15 25 down at the bottom of the figure? How does it describe how

05:01:17 1 those work?

05:01:18 2 A. So you have different cards with different statistics,  
05:01:22 3 and there are rules and resources that you have to abide  
05:01:24 4 by -- and we'll talk about that later -- before you can  
05:01:27 5 play a card or -- or use a card.

05:01:29 6 Q. Okay. What problem in earlier games did the '137 and  
05:01:36 7 '481 battle patents solve?

05:01:37 8 A. So this is from Column 1, Lines 44 through 54, in the  
05:01:46 9 '137 patent. And the patent is describing that the player  
05:01:50 10 can only do monotonous work if they have to continuously  
05:01:57 11 move their own character, micromanage it, keep hitting  
05:02:00 12 attack, attack, attack, and instruct it to switch and so on  
05:02:05 13 against an enemy character.

05:02:07 14 So, the patent was looking at ways to make the  
05:02:10 15 game more engaging.

05:02:10 16 Q. To be clear, the reference to monotonous work, what  
05:02:16 17 type of games is that describing?

05:02:17 18 A. That's grinding again.

05:02:19 19 Q. Okay. In the earlier prior art games?

05:02:21 20 A. Yes. So it's saying that what you see in the prior art  
05:02:24 21 starts out by in such conventional games. So it's  
05:02:28 22 referring to previous games, you -- you would have a deck,  
05:02:31 23 and once a deck is chosen, you can't change it. You play  
05:02:34 24 that deck, but it's not exciting and engaging.

05:02:38 25 Q. All right. Why is the invention of the '137 and the

05:02:44 1 '481 battle patents important to the video game industry  
05:02:47 2 and to players that play them?

05:02:49 3 A. So now I'm referring to Column 15, Lines 33 through 46,  
05:02:55 4 in the '137 patent. And the -- the patent is describing  
05:02:58 5 how if we can use the invention in this patent, the patent  
05:03:02 6 becomes -- the games become more engaging.

05:03:07 7 And the player is then -- can select from game  
05:03:11 8 content at the bottom. They can -- they need to manage.  
05:03:15 9 And they can use strategy in managing the resources. And  
05:03:20 10 it describes the second parameter value, which we're going  
05:03:24 11 to talk about later, where cards are assigned a value. And  
05:03:27 12 it's like a resource. And you cannot play a card unless  
05:03:31 13 you have enough resources.

05:03:33 14 So it's describing a complete way of playing the  
05:03:36 15 battle to make the game engaging.

05:03:38 16 Q. All right. Thank you.

05:03:38 17 Move on to the '655 donation patent.

05:03:42 18 What is this patent about, again, at a very high  
05:03:45 19 level?

05:03:46 20 A. So at a high level, this is about donating virtual  
05:03:52 21 objects that come from the server to different players, and  
05:03:55 22 then they get a benefit.

05:03:57 23 Q. Who gets the benefit?

05:03:59 24 A. The -- the player. So the -- the player decides that I  
05:04:02 25 want to give another player something. The server does the

05:04:07 1 transaction, and then the second player gets that gift.

05:04:11 2 And then they get the benefit -- an additional benefit.

05:04:15 3 Q. And so is it the do -- the donating player or the

05:04:18 4 receiving player that gets the -- the additional benefit

05:04:22 5 besides the original gift?

05:04:24 6 A. The receiving player.

05:04:25 7 Q. Okay. Why is it the receiving player would get the

05:04:28 8 benefit, not the donating player?

05:04:30 9 A. This is part of how the patent comes up with a way to

05:04:33 10 make it engaging. It's -- so if I'm going to gift somebody

05:04:37 11 something and it's going to give them an additional gift,

05:04:40 12 as somebody that's giving someone something, I -- I get the

05:04:44 13 joy of giving, and it helps them also level or it may help

05:04:48 14 them receive an additional benefit that's going to make

05:04:51 15 them enjoy the game and then hopefully they're going to

05:04:54 16 give me something later. And then I will get that benefit.

05:04:56 17 So it's a way to kind of let the players engage

05:05:00 18 each other by ending up with whatever they're getting and

05:05:07 19 an additional benefit.

05:05:08 20 Q. And what problem in earlier video games or gaming

05:05:11 21 systems did the '655 donation patent solve?

05:05:14 22 A. So the -- the patent was looking at -- like previously

05:05:18 23 there wasn't very good incentive or any sort of

05:05:21 24 pre-determined incentive when you wanted to give a gift or

05:05:25 25 maybe, you know, buy something virtually and give it to

05:05:27 1 somebody.

05:05:28 2           So it was looking at ways to improve how virtual  
05:05:32 3 merchandise is exchanged in -- in a video game.

05:05:36 4 Q. And why is that invention important in video games and  
05:05:40 5 to -- to video game companies and players?

05:05:43 6 A. Right. So now I'm referring to Column 3, Lines 13 to  
05:05:48 7 29. Because once someone gets something -- so someone can  
05:05:51 8 ask for something or I can pick something for them, but I  
05:05:55 9 need to select what I'm going to give them. And if I give  
05:05:58 10 them something and they get it and then they also get an  
05:06:01 11 additional benefit, maybe they can return the favor.

05:06:04 12           And so it makes the game more engaging for the  
05:06:08 13 people that are receiving, and then hopefully for me later,  
05:06:11 14 and I also get the joy of giving from helping a player out  
05:06:14 15 who may be, you know, on my team or part of my clan or  
05:06:18 16 someone that I play with regularly.

05:06:21 17 Q. All right. Let's look at the last of the five patents,  
05:06:23 18 the '873 shooting patent. At a high level, again, Dr. Akl,  
05:06:29 19 what is the '873 shooting patent about?

05:06:34 20 A. The '873 is about improvements to the interface of a  
05:06:40 21 touchscreen shooting game.

05:06:44 22 Q. Okay. When -- when you say interface, what do you  
05:06:46 23 mean?

05:06:46 24 A. So the -- so here I'm looking at Column 1, Lines 18  
05:06:49 25 through 22, and Column 2, Lines 10 through 13. And by

05:06:53 1 interface, I mean it's specifically looking at touch  
05:07:01 2 panel-based games.

05:07:02 3           So when you're playing a game on a touchscreen,  
05:07:05 4 whether it's a small phone or an iPad, you have -- you  
05:07:09 5 don't a very good way to do shooting or a precise way to  
05:07:11 6 shoot. So it's looking at improvement to the interface, so  
05:07:15 7 the interface is the way you touch the screen or you  
05:07:16 8 interact with the screen.

05:07:17 9 Q. So is that like a user interface?

05:07:20 10 A. Yes.

05:07:20 11 Q. Okay. All right. What problem in earlier video game  
05:07:24 12 systems did the '873 shooting patent solve?

05:07:26 13 A. So it's looking at ways to make the shooting more  
05:07:29 14 precise. And it's looking at ways to use that limited  
05:07:35 15 display and to have a good way of doing the touch that the  
05:07:42 16 user would interact with the screen in order to have a  
05:07:44 17 better shooting mechanism.

05:07:46 18 Q. Okay. All right. And were there problems with that  
05:07:54 19 type of mechanic in earlier video games?

05:07:56 20 A. Yes. So previous games that -- as we started -- and,  
05:08:02 21 remember, we're looking at when these patents came up with,  
05:08:06 22 you know, 15 years ago, a long time ago, where we just had  
05:08:10 23 touchscreens, the screens were very small, and we were  
05:08:12 24 looking at games that ran on these touchscreens that did  
05:08:15 25 not have very precise shooting.

05:08:18 1           So what this patent was looking at is how I can  
05:08:21 2 have precise shooting and how do I create an interface to  
05:08:24 3 do that in a -- a touch-based screen where I have very  
05:08:29 4 limited display area. That's what it was looking at where  
05:08:32 5 those operations would be complex.

05:08:34 6 Q. All right. And do the claims that we're going to look  
05:08:36 7 at from the '873 shooting patent describe the role of a  
05:08:41 8 server in carrying out this system?

05:08:43 9 A. Yes. So the -- the -- the patent itself looks at how  
05:08:47 10 the -- the game we'll talk with the server and how the  
05:08:50 11 server will instruct and will carry out the operations also  
05:08:53 12 on the other screens of the players.

05:08:55 13           So if I play on my computer and I shoot, that  
05:09:00 14 information is going to go to the server, and then the  
05:09:02 15 server is going to relay that to another game.

05:09:05 16 Q. All right. Now, following up on what you said earlier  
05:09:07 17 a little bit -- let's see.

05:09:12 18           MR. MOORE: If you go one more, please. There we  
05:09:14 19 go.

05:09:15 20 Q. (By Mr. Moore) Are the GREE patents, the five patents  
05:09:18 21 at issue in this case, comparable any way -- in any way?

05:09:22 22 A. Yes. All five patents are technologically comparable  
05:09:27 23 for a few reasons, and I can go into those.

05:09:30 24 Q. Please do explain why you believe that.

05:09:32 25 A. So, first, all the claims deal with improvements to



05:09:39 1 video games that would make the games more engaging and  
05:09:41 2 more fun.

05:09:44 3 Also, all the claims require a device  
05:09:48 4 communicating with a server. Sometimes the patent refers  
05:09:50 5 to it as a terminal device or a device, and you have to  
05:09:55 6 talk with the server, and -- and so they describe a system  
05:09:57 7 between the device and -- and the server.

05:10:00 8 Also, if -- you may have heard the term "person of  
05:10:04 9 ordinary skill." This is the person who can analyze the  
05:10:09 10 minimum qualifications to look at those patents. And the  
05:10:12 11 qualifications for somebody to understand these patents are  
05:10:15 12 the same. So each patent has the same qualifications  
05:10:19 13 required for this person of ordinary skill.

05:10:22 14 MR. SACKSTEDER: Your Honor, objection. I think  
05:10:23 15 he's going beyond his expert report.

05:10:27 16 THE COURT: All right. Do you have a response,  
05:10:34 17 Mr. Moore?

05:10:34 18 MR. MOORE: I don't believe he is. I -- I  
05:10:37 19 apologize. I don't have the report in front of me, but I  
05:10:41 20 don't think he said anything that was not also said in the  
05:10:43 21 report. I think he talked about the client server issue in  
05:10:46 22 the report, how they relate to social aspects of games,  
05:10:50 23 increased engagement, and -- and also talked about the  
05:10:54 24 skill of -- the skill in the art, level of skill in the  
05:10:56 25 art, but I don't have the report in front of me.

05:10:58 1 THE COURT: Well, we'll either -- we'll either be  
05:11:01 2 able to resolve it between you two, or I'll have to get the  
05:11:05 3 report and we'll have to look at it precisely.

05:11:08 4 MR. MOORE: Understood. Your Honor --

05:11:13 5 THE COURT: Do you need a minute to confer with  
05:11:16 6 counsel, or is this something we just need to get the  
05:11:19 7 report out on?

05:11:20 8 MR. SACKSTEDER: I'm trying to go through the  
05:11:21 9 report right now, Your Honor. I apologize, I wasn't on the  
05:11:24 10 precise page. It'll take me a minute or two to -- to  
05:11:30 11 locate it.

05:11:30 12 THE COURT: All right. Well, then while -- while  
05:11:37 13 we're doing this, ladies and gentlemen, I'm going to let  
05:11:39 14 you have a short recess. If you'd simply close your  
05:11:42 15 notebooks and leave them in your chairs, don't discuss  
05:11:45 16 anything about the case.

05:11:46 17 As soon as I can get this resolved, I'll have you  
05:11:48 18 back, and we'll continue with this witness.

05:11:50 19 The jury is excused for recess.

05:11:52 20 COURT SECURITY OFFICER: All rise.

05:11:53 21 (Jury out.)

05:11:54 22 THE COURT: All right. Be seated, please.

05:12:21 23 Tell me precisely, Mr. Sacksteder, what  
05:12:26 24 substantively you believe the witness was queried about  
05:12:30 25 that was beyond the scope of his report.

05:12:33 1 MR. SACKSTEDER: Your Honor, and, again, I'm going  
05:12:35 2 on my recollection of the report, but I believe that he  
05:12:38 3 just said that in his report, that he based his  
05:12:44 4 determination of comparable technology on whether they were  
05:12:48 5 mobile games and whether the features were -- the claimed  
05:12:55 6 features were aimed at increasing user engagement or  
05:13:00 7 interest. I believe that's roughly the language, and I  
05:13:03 8 apologize that I haven't been able to find it in the  
05:13:05 9 report.

05:13:06 10 THE COURT: Does that give -- does that give you  
05:13:09 11 any more information from which to respond, Mr. Moore?

05:13:13 12 MR. MOORE: I am -- I have a copy of the report  
05:13:14 13 right there that I can go grab.

05:13:17 14 THE COURT: Then you need to grab your copy of the  
05:13:19 15 report.

05:13:19 16 MR. MOORE: Thank you.

05:13:19 17 THE COURT: That's why I sent the jury out.

05:13:21 18 MR. MOORE: Thank you.

05:13:46 19 Your Honor, may I use the ELMO?

05:13:52 20 THE COURT: You believe you've got a response for  
05:13:55 21 me to see, Mr. Moore?

05:13:56 22 MR. MOORE: Yes, Your Honor.

05:13:57 23 THE COURT: All right. Tell us what you're  
05:13:59 24 putting on the screen and where it's from so Mr. Sacksteder  
05:14:01 25 can see it, as well.

05:14:03 1 MR. MOORE: Certainly. This is from Dr. Akl's  
05:14:05 2 opening report in the 70 case. And I think he hit a lot of  
05:14:12 3 these same points, talking about client -- all relating to  
05:14:16 4 video game services, client applications and servers,  
05:14:18 5 enhance the user's experience, increase user engagement. I  
05:14:22 6 think that's essentially what he said on the stand just  
05:14:25 7 now.

05:14:29 8 MR. SACKSTEDER: There's a specific paragraph that  
05:14:30 9 discusses comparable technology in his report, but I do  
05:14:35 10 think it's about that. And I think he was going to  
05:14:39 11 whether -- you know, whether the patent would be  
05:14:41 12 understandable at the same level of skill in the art and  
05:14:44 13 whether they used a server, and I don't think that was in  
05:14:47 14 the discussion of comparable technology.

05:14:54 15 THE COURT: Well, where he was going is not what  
05:14:57 16 we have to deal with. What we have to deal with is where  
05:15:02 17 he was asked to go and where he started to go. I mean, if  
05:15:05 18 this is an anticipatory objection that he's about to go too  
05:15:08 19 far, then we're wasting our time.

05:15:11 20 MR. SACKSTEDER: It is not, Your Honor.

05:15:11 21 THE COURT: Okay.

05:15:12 22 MR. SACKSTEDER: The last two -- the first couple  
05:15:14 23 of things he said I recognized from his report. And then  
05:15:16 24 the next two I did not from his specific discussion of  
05:15:22 25 comparable technology.

05:15:23 1 THE COURT: All right. Mr. Moore, do you have any  
05:15:28 2 references addressing that comparable technology issue?

05:15:30 3 MR. MOORE: I believe this is the reference, and  
05:15:32 4 so this -- this is the discussion in the report. And I  
05:15:38 5 don't have the live feed in front of me, but from my  
05:15:41 6 recollection of the answer, I don't think he introduced  
05:15:44 7 concepts that weren't in the report.

05:15:46 8 I would also note that I know this is not in the  
05:15:49 9 report, but counsel asked him at length at the deposition  
05:15:52 10 and asked him a lot more questions about why he had  
05:15:55 11 underpinnings of all these opinions, and he explained that  
05:15:59 12 fully at deposition.

05:16:00 13 THE COURT: That's not germane to this objection.  
05:16:02 14 All right. Let me ask this, Mr. Moore: Do you  
05:16:05 15 have more to offer the Court other than what you have on  
05:16:07 16 the ELMO in support of your response to the objection?

05:16:12 17 MR. MOORE: No, Your Honor. This is the relevant  
05:16:14 18 section of the report.

05:16:15 19 THE COURT: And, Mr. Sacksteder, in light of this,  
05:16:19 20 what else do you have to tell me?

05:16:21 21 MR. SACKSTEDER: Well, I -- I think perhaps I was  
05:16:23 22 mistaken that it's in Dr. Becker's report where he relies  
05:16:26 23 on a conversation with Dr. Akl. And Dr. Becker refers to  
05:16:32 24 those things that I referenced; that it's a mobile game,  
05:16:36 25 and it is a feature designed to improve user engagement.

05:16:42 1 And I think that's all he said that Dr. Akl said to him.

05:16:49 2 And the last -- he listed four things, and he  
05:16:52 3 talked about using a server, and then he talked about  
05:16:54 4 having the patents be understandable to the same level of  
05:16:57 5 skill in the art, and he just didn't say that in -- in  
05:17:02 6 Dr. Becker's recounting of the conversation, and I don't  
05:17:06 7 see it in his report. I see the first part in Paragraph 4  
05:17:10 8 of his report.

05:17:14 9 THE COURT: You have something else, Mr. Moore?

05:17:16 10 MR. MOORE: I think he does. I mean, I -- I don't  
05:17:20 11 have Dr. Becker's report in front of me, but if what we're  
05:17:23 12 talking about is what Dr. Akl is saying and he talks about  
05:17:27 13 servers, and he talks about user experience and user  
05:17:30 14 engagement.

05:17:30 15 He separately does talk in the report -- in his  
05:17:33 16 report, Dr. Akl's report, about level of ordinary skill, as  
05:17:36 17 well, and he uses the same level of ordinary skill for all  
05:17:39 18 the patents. But -- so I -- I don't think there's an  
05:17:44 19 inconsistency.

05:17:48 20 THE COURT: All right. This is exactly why I  
05:17:50 21 talked to both sides about the disruptive nature of this  
05:17:53 22 kind of exhibit (sic), especially at 17 minutes after 5:00  
05:18:00 23 p.m. on a long day.

05:18:01 24 All things considered, I'm not persuaded that  
05:18:11 25 there's an adequate discussion of technological

05:18:13 1 comparability. Now, the objection was raised on several  
05:18:17 2 points. I'll sustain it on that.

05:18:20 3 On the other points, it appears that there is  
05:18:23 4 adequate coverage in the report, and I'll overrule it on  
05:18:27 5 that.

05:18:28 6 But as to the technological comparability, it just  
05:18:36 7 doesn't look like what he's answered is within the scope of  
05:18:39 8 what's there before us.

05:18:43 9 I'm going to charge this time equally since both  
05:18:47 10 kind of won half of this and lost half of this.

05:18:52 11 I'm going to bring the jury in, we'll continue  
05:18:54 12 with the examination, but you'll need to examine the  
05:18:58 13 witness based on this ruling going forward.

05:19:01 14 MR. MOORE: Yes, Your Honor. And -- and just so  
05:19:03 15 I -- I'm understanding, am I -- I mean, I would like to  
05:19:09 16 examine the witness on this -- these statements in  
05:19:11 17 Paragraph 4 of his report.

05:19:12 18 THE COURT: Then I would hue closely to those  
05:19:15 19 statements in Paragraph 4.

05:19:17 20 MR. MOORE: Okay. I will do that.

05:19:18 21 THE COURT: All right?

05:19:18 22 MR. MOORE: May I ask one other thing in terms of  
05:19:21 23 forecast?

05:19:22 24 I was actually right at the point where I was  
05:19:24 25 going to switch from the introduction to the infringement

05:19:26 1 analysis and introduce the accused games, but just in terms  
05:19:30 2 of the Court's planning, I wanted to just alert you to  
05:19:33 3 that's where I am in terms of the examination.

05:19:36 4 THE COURT: Well, all other things being equal, I  
05:19:39 5 had thought I would stop for the day at 5:30. We're about  
05:19:41 6 11 minutes away from that. I don't want to break in the  
05:19:45 7 middle of a thought that will have to be completed tomorrow  
05:19:50 8 morning. There may not be a perfect place to do it.

05:19:53 9 What does another 10 minutes or so of examination,  
05:19:56 10 where does that put you in your outline?

05:19:58 11 MR. MOORE: Well, we're planning -- I'm -- I'm  
05:20:00 12 going to have to go back through and try to get some more  
05:20:03 13 on the com -- comparability issue, and then we're -- I was  
05:20:07 14 going to have Dr. Akl introduce the three accused games and  
05:20:10 15 just describe them. And then we're going to get into the  
05:20:13 16 infringement about first dealing with --

05:20:15 17 THE COURT: All right. Let's get through his  
05:20:17 18 description of the games, and we'll use that as a place to  
05:20:19 19 break.

05:20:19 20 MR. MOORE: Thank you.

05:20:20 21 THE COURT: All right. Let's bring in the jury,  
05:20:22 22 please, Mr. Prim.

05:20:24 23 COURT SECURITY OFFICER: All rise.

05:20:25 24 (Jury in.)

05:20:26 25 THE COURT: Please be seated.



05:20:57 1 Thank you for your understanding, ladies and  
05:21:01 2 gentlemen of the jury.

05:21:01 3 For purposes of the record, the Defendant objected  
05:21:06 4 to the testimony of the witness on three or four discreet  
05:21:10 5 points and asserted that they were beyond the scope of the  
05:21:14 6 expert's report.

05:21:17 7 I've reviewed this matter outside of your presence  
05:21:19 8 with counsel, and I've had the benefit of reviewing the  
05:21:22 9 reports. It's my ruling that on three of those points, the  
05:21:29 10 Defendant is overruled. On one of those points, the  
05:21:33 11 Defendant is sustained.

05:21:34 12 With regard to a technological comparability, you  
05:21:39 13 should disregard what's been said heretofore. I understand  
05:21:43 14 Plaintiff's counsel is going to revisit it more in line  
05:21:46 15 with the outlines of the expert's report, and we'll proceed  
05:21:48 16 on that basis.

05:21:49 17 MR. MOORE: All right.

05:21:50 18 THE COURT: Let's proceed, Mr. Moore.

05:21:51 19 MR. MOORE: Thank you, Your Honor.

05:21:51 20 Q. (By Mr. Moore) Dr. Akl, could you please describe, at  
05:21:58 21 a high level, what all of the accused -- I'm sorry, let me  
05:22:01 22 start over.

05:22:01 23 Could you please describe, at a high level, what  
05:22:04 24 all of the asserted GREE patents relate to?

05:22:06 25 A. Yes. So all -- the -- all five patents deal with

05:22:13 1 improvements to video games to make the games more engaging  
05:22:15 2 and more fun.

05:22:16 3 Q. All right. And what type of systems are used in those  
05:22:21 4 patents?

05:22:22 5 A. And they deal with server/client systems where you have  
05:22:27 6 a server and you have a remote device that communicates  
05:22:29 7 with the server. And both of them become the system for  
05:22:34 8 the game.

05:22:34 9 Q. And as a result of those similarities, what conclusions  
05:22:39 10 do you draw from that in terms of their comparability?

05:22:42 11 A. That they are technologically comparable. Like all  
05:22:46 12 five patents are technologically comparable because they  
05:22:48 13 deal with the same field with video games, with ways of  
05:22:52 14 improving the video games, with making the games engaging  
05:22:55 15 in a client/server environment.

05:22:59 16 Q. Thank you, Dr. Akl.

05:23:00 17 All right. I'd like to ask you about the  
05:23:07 18 Supercell games, and let's start with Clash of Clans.  
05:23:10 19 Could you please describe what Clash of Clans is for the  
05:23:12 20 jury?

05:23:12 21 A. Yes. So what I'm showing here on the left is the  
05:23:16 22 splash screen. And by splash screen, is normally the first  
05:23:20 23 screen you see when you load the game. But just so that we  
05:23:22 24 get a sense of the game, I'm also showing on the right a  
05:23:27 25 screenshot from me playing the games.

05:23:29 1 So Clash of Clans is a freemium game, and you  
05:23:31 2 place buildings around, you generate troops, and the point  
05:23:37 3 is to defend your village.

05:23:40 4 So, ultimately, you're going to have towers and  
05:23:44 5 walls and soldiers, and the point is you can take your  
05:23:49 6 troops and you can attack another village, or if your  
05:23:52 7 village is attacked, you can defend it.

05:23:55 8 Q. Okay. And is Clash of Clans a social game, you play  
05:23:59 9 with others?

05:23:59 10 A. Yes. So it's a social game because you can join like a  
05:24:08 11 clan or like a guild. It's basically like you having your  
05:24:12 12 friends, like a friends' list and you can play against your  
05:24:16 13 friends or you can play against anybody in the world. And  
05:24:19 14 it's -- it's -- it's -- you either win or lose depending on  
05:24:23 15 if you destroy your village or they destroy your village.

05:24:27 16 Q. And how do you join a clan?

05:24:30 17 A. You just click the social tab and then you can join a  
05:24:35 18 clan or you can get an invite from a friend to join a clan.

05:24:39 19 Q. Do the people in your clan have to be people you know?

05:24:43 20 A. No, they can be anybody on the Internet.

05:24:46 21 Q. Excuse me. How does Supercell receive revenue from  
05:24:49 22 Clash of Clans?

05:24:50 23 A. So the game is free to download. So they don't get  
05:24:53 24 paid when you download the game, but they -- it's a  
05:24:56 25 freemium game, which means you can use real money to get

05:25:01 1 gold in the games. So you can unlock freemium features or  
05:25:06 2 you can unlock buildings or you can make things develop  
05:25:12 3 faster.

05:25:12 4 See, it's called microtransactions where if you  
05:25:16 5 download it from the Apple Store, you use real money to get  
05:25:19 6 game currency that then allows you to unlock stuff, or you  
05:25:24 7 can use real money to get additional virtual buildings and  
05:25:28 8 so on.

05:25:29 9 And it's the same thing if you download it from  
05:25:31 10 the Google Store, the Google App Store, you can also use  
05:25:34 11 real money to unlock things. So they make money from the  
05:25:39 12 microtransactions.

05:25:39 13 Q. And what can you do if you were to spend real money to  
05:25:42 14 get the gold within the game, what do you do with that  
05:25:44 15 gold?

05:25:44 16 A. So you can unlock additional buildings, and you can  
05:25:48 17 make your village stronger. So it's a way to give you an  
05:25:51 18 advantage to win.

05:25:53 19 Q. Is there something called gems in the game, as well?

05:25:56 20 A. Yeah, so what you see here are different resources. So  
05:25:59 21 you have the gems in green and you have, like, gold and you  
05:26:03 22 have the -- so you have different resources.

05:26:05 23 Some of the resources like the -- the pink, you  
05:26:07 24 have buildings that generate pink, and gold you have  
05:26:11 25 resources that generate gold, but then you can buy stuff

05:26:14 1 with gems.

05:26:15 2           So there's multiple currencies in the game,  
05:26:20 3 multiple resources. Some of those resources you generate  
05:26:23 4 within the game and some you unlock and some you win and so  
05:26:27 5 on.

05:26:27 6 Q. All right. And what about Clash Royale, could you  
05:26:30 7 please describe that game for us?

05:26:32 8 A. Yes. So, again, on the left, is the splash screen, the  
05:26:36 9 title screen, and on the right is a snapshot from playing  
05:26:41 10 the game.

05:26:42 11           So in this game, you are battling another player  
05:26:44 12 in this example, and -- so I'm the player at the bottom.  
05:26:50 13 And down here, I can select game content. So right now,  
05:26:54 14 they're all grayed out, so I cannot select one of these  
05:26:56 15 four cards.

05:26:57 16 Q. Why are they grayed out? Sorry to interrupt you.

05:27:02 17 A. They're grayed out, because if you look, they have a  
05:27:04 18 number assigned to them. So this is 4, this is 3, this is  
05:27:08 19 5, and 5, but I only have two. So you require at least  
05:27:13 20 enough resources to play it.

05:27:14 21           So the number at the bottom we're going to see is  
05:27:18 22 called the Elixir, and so this meter is going to grow. And  
05:27:21 23 until this hits three points -- once it hits three points,  
05:27:25 24 I can play this card.

05:27:26 25 Q. Okay.

05:27:26 1 A. Once it hits four points, I can select this card to  
05:27:29 2 attack. But until then, my cards are grayed out.

05:27:33 3 Q. I think you said the word for that resource is Elixir;  
05:27:37 4 is that right?

05:27:37 5 A. Yes, yes.

05:27:38 6 Q. Okay. And what is Elixir?

05:27:39 7 A. Elixir is just a term used to denote a resource.

05:27:44 8 Q. Okay.

05:27:44 9 A. It's -- it's a mystical term that's used in video  
05:27:48 10 games.

05:27:48 11 Q. So what happens when my Elixir gets to three or four  
05:27:51 12 points, and I decide to play one of those two cards?

05:27:55 13 How -- how do I play it, and what happens?

05:27:58 14 A. Right. So the point is -- also you want to defend your  
05:28:02 15 side. So this is my king in the middle, and I have two  
05:28:05 16 towers, and the enemy has a king, and they have two towers.

05:28:09 17 And what you see -- the red is the health for the  
05:28:17 18 enemy side and the blue is the health for my side. And I  
05:28:21 19 want to -- you basically grab and drag and release. And  
05:28:26 20 you'll see a video.

05:28:27 21 So right now this is a still. But we'll have  
05:28:30 22 plenty of videos of me doing that. And then the card will  
05:28:34 23 become a character, and it will attack.

05:28:35 24 Q. Who are you -- well, strike that.

05:28:39 25 When you say the enemy, what are you referring to?

05:28:43 1 Who is the enemy in the game?

05:28:45 2 A. So in this example, an enemy character is -- the -- the  
05:28:49 3 other side will also have their other cards, and they will  
05:28:52 4 move them and deploy them, and they will create enemy  
05:28:56 5 characters that will come down and attack me. And so in  
05:28:59 6 the middle, they'll start fighting.

05:29:01 7 Q. Is Clash Royale a social game?

05:29:03 8 A. Yes, because, again, you play your friends or you can  
05:29:06 9 play anybody around the world. You can have social clubs.  
05:29:11 10 And it's a three-minute game, and you either win or lose,  
05:29:15 11 and you keep trying, and you build better cards. And it's  
05:29:19 12 fun.

05:29:19 13 Q. All right. Now, when you sign on to the game and want  
05:29:24 14 to play, are you playing the computer, or are you playing  
05:29:27 15 another person?

05:29:27 16 A. When you start, it walks you through a tutorial. So  
05:29:31 17 the game will teach you how to play, and you initially play  
05:29:35 18 the computer a couple of times to get comfortable with the  
05:29:37 19 game mechanics. And then it will allow you to play other  
05:29:40 20 people.

05:29:40 21 Q. And how does it find those other people for you to  
05:29:44 22 play?

05:29:45 23 A. Again, everything happens through Supercell's servers.  
05:29:48 24 So you can't play the game unless you're connected to  
05:29:51 25 Supercell's server. So when you launch the game, if you

05:29:54 1 don't have an Internet connection, it won't start.

05:29:56 2           Once you have an Internet connection and it  
05:29:59 3 connects to Supercell's server, the server will send a ping  
05:30:02 4 and will try to find somebody else who also is looking for  
05:30:06 5 a player, and it will -- the server will match you with  
05:30:08 6 another player usually at the same rank. So you're playing  
05:30:12 7 somebody at your skill level.

05:30:13 8 Q. And how does Supercell make money on Clash Royale?

05:30:15 9 A. So the game becomes very competitive. Like, I've  
05:30:19 10 played it, and you get hooked quickly. So the point is you  
05:30:23 11 want better soldiers. You want things that are going to do  
05:30:27 12 more damage. And you can unlock them as you level up, or  
05:30:30 13 you can use real money to get game currency that then will  
05:30:35 14 help you level and unlock cards and have a better set of  
05:30:40 15 troops so you win more often.

05:30:41 16 Q. All right. Lastly, what is Brawl Stars?

05:30:43 17 A. Brawl Stars is our third game. On the left is the  
05:30:47 18 splash screen, the title, and on the right is a screenshot  
05:30:53 19 of me playing that game.

05:30:54 20 Q. And how do you play Brawl Stars?

05:30:56 21 A. So in this example, you have three players on your  
05:31:00 22 side, you're 1 out of 3. And there are three enemies. And  
05:31:05 23 you -- in here you control your character.

05:31:07 24           So, in this case, this is my character that's  
05:31:10 25 highlighted in green. And the way you play it is through



05:31:15 1 virtual controls. So it's meant for a touchscreen where  
05:31:19 2 you don't have a controller.

05:31:20 3 So the way you play is once you put your thumb on  
05:31:24 4 the screen, when I put my left thumb, I get this virtual  
05:31:28 5 blue controller. When I put my right thumb, I get this  
05:31:31 6 virtual red controller. And that's how you play the game.

05:31:34 7 Q. And is Brawl Stars a social game?

05:31:37 8 A. Yes. It's -- it's a social game. Because, again, you  
05:31:42 9 play your friends or you play people that you don't know,  
05:31:46 10 and you level up. And you -- you get to play more people,  
05:31:49 11 and you can join social clubs.

05:31:51 12 Q. How does the game decide who you're going to play  
05:31:55 13 against or with?

05:31:55 14 A. The server will decide that. So, again, for all the  
05:32:00 15 games, you need an Internet connection. You need to be  
05:32:03 16 connected to Supercell's server. The server will look at  
05:32:07 17 your level, will try to see who is also interested in  
05:32:10 18 playing and launching the game at that point in time and  
05:32:15 19 their skill sets, and will try to match you with another  
05:32:18 20 player. So we're going to see a video later that shows  
05:32:21 21 looking for opponent. And then once you have two teams  
05:32:24 22 ready, the game will launch.

05:32:25 23 Q. How does Supercell make money on Brawl Stars?

05:32:27 24 A. The -- the game makes money. Again, it's free to  
05:32:33 25 download, but there's a lot of stuff that you can unlock.

05:32:36 1 And, again, you can use real money to get currency in the  
05:32:42 2 game.

05:32:42 3 And then you can unlock different players.  
05:32:45 4 They're called brawlers, like Brawl Stars. So a brawler is  
05:32:48 5 the name of your character. You can unlock more  
05:32:51 6 characters. You can unlock better weapons. You can unlock  
05:32:55 7 different features and game modes, and this is how the game  
05:32:59 8 makes money.

05:32:59 9 Q. All right.

05:33:00 10 MR. MOORE: Your Honor, at this time, we would be  
05:33:01 11 proceeding to the detailed infringement analysis of the  
05:33:05 12 claims. I just wanted to let you know that's where we  
05:33:07 13 were.

05:33:08 14 THE COURT: All right. I appreciate that  
05:33:09 15 information.

05:33:09 16 Ladies and gentlemen of the jury, this is a good  
05:33:12 17 juncture to stop for the day. I'm informed by counsel that  
05:33:16 18 this witness has a considerable amount of additional  
05:33:19 19 testimony, and I'm not going to stay as late as it would  
05:33:23 20 take to finish this witness tonight.

05:33:25 21 I'm going to ask you when you leave the courtroom  
05:33:28 22 to go through the jury room, leave your notebooks closed on  
05:33:31 23 the table in the jury room, leave your face shields there  
05:33:35 24 on your notebooks.

05:33:37 25 Please remember my instructions not to bring your

05:33:40 1 cell phone or electronic devices into the courtroom

05:33:42 2 tomorrow. Please travel safely to your homes.

05:33:49 3 I'm aware that several of our jurors live in the  
05:33:52 4 far reaches of the division from where we are, and I want  
05:33:56 5 to be mindful of your travel time.

05:33:57 6 However, I want you to know, and I haven't --  
05:34:00 7 haven't mentioned this earlier, but this is as good a point  
05:34:03 8 as any. It's been my experience while on the bench that  
05:34:07 9 jurors in East Texas would rather work longer days and be  
05:34:12 10 away from their families and their work a fewer number of  
05:34:15 11 days than to work shorter days and be gone a much longer  
05:34:16 12 number of days. So that's the way I'm going to approach  
05:34:19 13 this trial.

05:34:21 14 And what that means is I'd like to start each  
05:34:24 15 morning with the jury at 8:30, which means I'm going to ask  
05:34:29 16 you to be assembled in the jury room by about 8:15 or 8:20  
05:34:32 17 and ready to go at 8:30.

05:34:34 18 Now, there are things I take up with counsel  
05:34:37 19 outside of your presence each morning, and we may not hit  
05:34:40 20 that target and start exactly at 8:30, but I want you, if  
05:34:45 21 you will, to be here and ready to go by that time.

05:34:48 22 Also, we may go to 5:30 or even 6:00 o'clock to go  
05:34:54 23 through the remainder of the week to get this case  
05:34:57 24 completed without having to go beyond the time I gave you.

05:35:00 25 So, for planning purposes, those of you that have

05:35:05 1 families at home, people that you interact with, you might  
05:35:09 2 let them know not to expect you to be leaving here any  
05:35:12 3 earlier than 5:30 or 6:00 o'clock.

05:35:15 4 It's not an exact science, ladies and gentlemen.  
05:35:17 5 If we have a witness who's been on the stand a lengthy  
05:35:22 6 period of time and staying an extra five or 10 minutes  
05:35:27 7 finishes that witness, then that's something I will  
05:35:29 8 probably do.

05:35:30 9 It's -- it's always preferable to complete a  
05:35:35 10 witness and not break a witness in the middle of their  
05:35:37 11 testimony, if you can. It makes for a more -- in my view,  
05:35:42 12 it makes for a more understandable narrative of the  
05:35:42 13 evidence and easier to follow both for the Court and for  
05:35:42 14 the jury.

05:35:47 15 So it's not an exact science. We're not going to  
05:35:50 16 punch a clock, and exactly at a certain time, we're not  
05:35:54 17 going to stop no matter where we are in the case.

05:35:56 18 But in a general sense, I'm going to try to go  
05:35:59 19 from about 8:30 in the morning to about 5:30 or 6:00  
05:36:04 20 o'clock each evening. And if you'll take that into account  
05:36:07 21 as you deal with your family members and those that you're  
05:36:10 22 in contact for planning purposes.

05:36:12 23 So, with that, please travel safely to your homes.  
05:36:16 24 Remember when you get home, you're going to get asked what  
05:36:19 25 happened here today. Don't even try to answer that

05:36:21 1 question. Be very vigilant not to communicate with anybody  
05:36:27 2 about this case. Follow all my other instructions, travel  
05:36:31 3 safely to your homes, and I will see you tomorrow morning.

05:36:35 4 The jury is excused for the evening.

05:36:37 5 COURT SECURITY OFFICER: All rise.

05:36:38 6 (Jury out.)

05:36:38 7 THE COURT: Be seated, please.

05:37:11 8 Counsel, let me remind you that beginning first  
05:37:13 9 thing in the morning and throughout the remainder of the  
05:37:15 10 trial, I will -- when I come into the courtroom, I will ask  
05:37:19 11 each side to have a representative prepared and able to go  
05:37:22 12 to the podium and read into the record the items from the  
05:37:26 13 list of pre-admitted exhibits that have been used by each  
05:37:29 14 side of the case during the preceding day's portion of the  
05:37:32 15 trial.

05:37:32 16 And I'll begin that first thing in the morning.

05:37:36 17 Also, I remind you that I will be in chambers by  
05:37:39 18 7:30, and I will look for the reports from you regarding  
05:37:45 19 any possible overnight disputes that have not been  
05:37:49 20 resolved.

05:37:49 21 Let me encourage you to meet and confer to the  
05:37:51 22 fullest extent possible and to keep those disputes to a  
05:37:56 23 minimum, but to maximize the effective use of your  
05:38:01 24 designated trial time, I will be available from 7:30 to  
05:38:03 25 8:30 to give you guidance on any surviving disputes in

05:38:08 1 chambers before we begin with the jury at 8:30.

05:38:10 2 Are there questions from either side before we  
05:38:12 3 recess for the evening?

05:38:14 4 MR. MOORE: Not from the Plaintiff, Your Honor,  
05:38:17 5 thank you.

05:38:18 6 MR. DACUS: No, Your Honor, thank you.

05:38:20 7 THE COURT: And I assume, Mr. Moore, that this  
05:38:22 8 witness is not going to be woodshedded overnight to  
05:38:27 9 continue his testimony tomorrow.

05:38:28 10 MR. MOORE: No, Your Honor.

05:38:29 11 THE COURT: That's my expectation. I just wanted  
05:38:34 12 to be clear on that.

05:38:35 13 All right. We stand in recess until tomorrow  
05:38:38 14 morning.

05:38:39 15 COURT SECURITY OFFICER: All rise.

05:38:41 16 (Recess.)

17

18

19

20

21

22

23

24

25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/2020

9/10/2020  
Date